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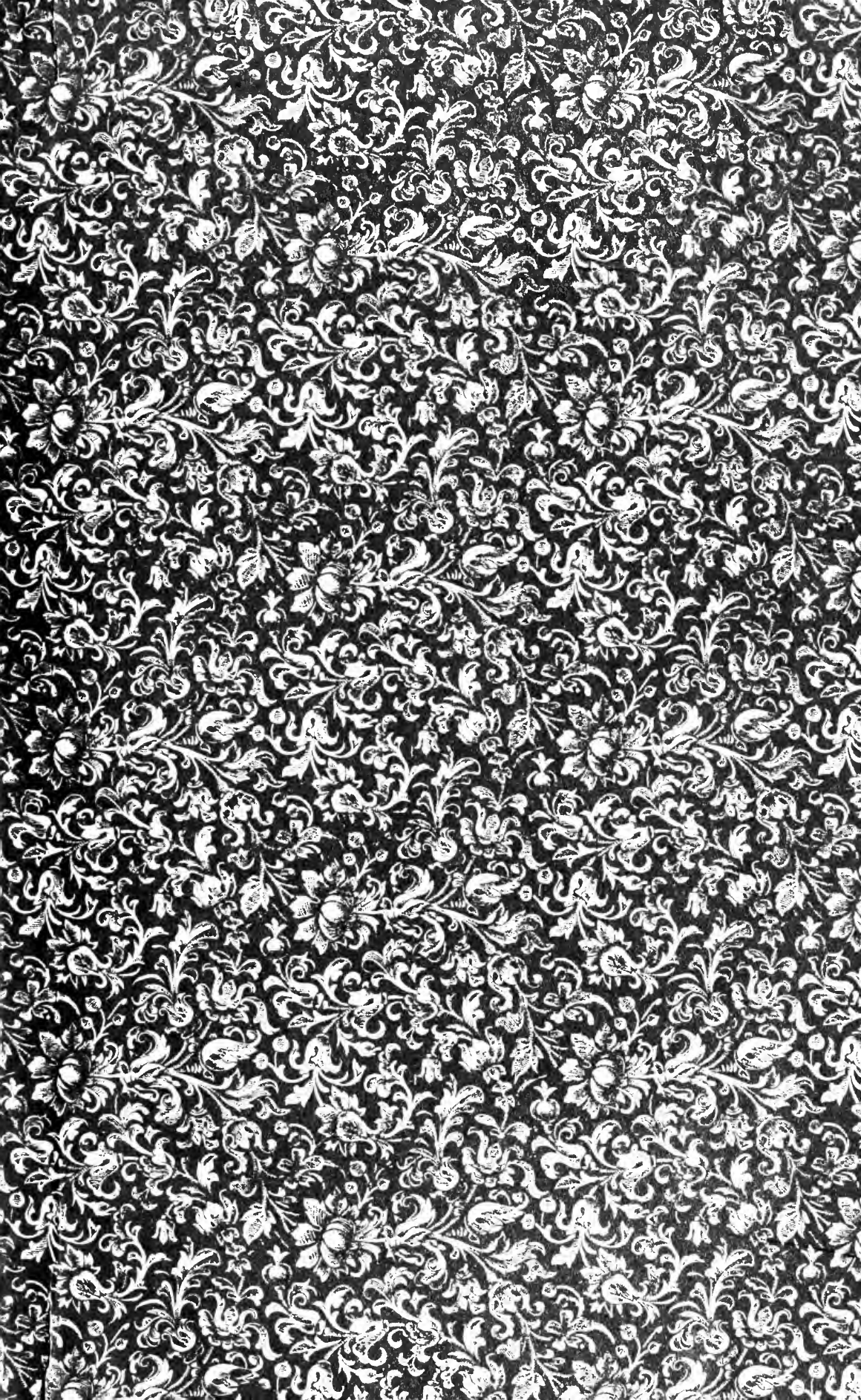

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# THE RIGHT OF SANCTUARY IN ENGLAND

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# THE RIGHT OF SANCTUARY IN ENGLAND

## *A Study in Institutional History*

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# Dedication

This Study
is affectionately dedicated
to my Father,
The Hon. Mr. Justice Trenholme,
of Montreal, Canada

# THE RIGHT OF SANCTUARY IN ENGLAND

## INTRODUCTORY

### THE ORIGIN AND DEVELOPMENT OF THE RIGHT OF ASYLUM IN EUROPE

The progress of the human race toward greater civilization and order is in no way better understood than by studying institutions which have now disappeared. The growth of strong and settled national governments and the formation of organized judicial systems, insuring a proper administration of justice, did much in Europe in the later Middle Ages to clear away abuses and remedy social evils. Amongst a host of mediaeval customs, more or less injurious to society, which finally disappeared in England at the dawn of the Modern Era, was that one known as Right of Sanctuary, by which criminals of almost every sort had been allowed refuge and protection from the hand of the law in churches, abbeys, and other sanctified places. In the dark ages of the world's history, or in times of mediaeval violence and rapine, such a privilege might well be allowed as a protection against too summary and hasty vengeance. The state of society in the Middle Ages was such that to the Church and to religion alone could men look for protection against murder and violence disguised under the name of private justice. But with the advent of a well-organized judiciary and even-handed justice, sanctuaries and asylums became places of escape rather than refuge, and

a curse rather than a blessing to men. Under these circumstances it was not strange that the State insisted on their suppression, and the doing away of sanctuary privilege, and though the Church fought long and stubbornly to retain its immunities in the matter of protecting criminals it had at last to submit.

It is to trace the history and customs of sanctuary as it existed in England that this essay is written, after a careful study of records and evidence as to the use and abuse of the privilege. It is hoped to show that sanctuary-seeking was far more general in England than is ordinarily believed to have been the case and that the English sanctuary places, especially during the later period of their history were important centers of criminal resort. Many peculiar forms of sanctuary procedure and custom will be commented on and, incidentally, the kindred legal institution of abjuration (*abjuratio regni*) will receive some attention, though this feature of the right of sanctuary has already been treated in a scholarly manner by another writer.[1] Before, however, proceeding to a detailed treatment of sanctuary in England, some consideration must be given to the previous history of religious protection to criminals and fugitives in the ancient world, and in connection with the early Christian Church, under the name of asylum.[2]

The general idea of protection or asylum afforded to fugitives is one, undoubtedly, of exceedingly ancient origin. It is connected, often, with the beginnings of city states and new communities. Romulus, the mythical founder of Rome, for

[1] Réville, *Abjuratio regni*, Revue Historique, Sept. 1892.

[2] Asylum is the Latin and English form of the Greek ἄσυλον, a place free from robbery or violence. In modern times asylum has come to mean an institution which shelters unfortunate or destitute persons. In French and German, however, the word still retains its older meaning as a place of refuge, a sanctuary. Mazzinghi, *Sanctuaries*, p. 9; Bulmerincq, *Das Asylrecht*, p. 32, note.

example, is said to have made the Palatine hill an asylum for fugitives, preparatory to the building and peopling of his city, and the Romans themselves clung with proud humility to this myth and believed that their ancestors had been a mixed concourse of outlaws and refugees. The myth or legend has, probably, no greater significance than that in new communities fugitives and criminals were not unwelcome, as they would increase the male population. The story of the asylum offered was, without doubt, a later addition from the pen of some historian.[3]

But we can go further back than the founding of Rome and obtain what may perhaps be considered as more authentic examples of the right of asylum, namely the cities of refuge instituted by the Israelites under Moses and Joshua. By all odds the state system of asylum for the protection of homicides, which they devised and maintained, is the most remarkable on record. At first there were three Hebrew cities of refuge whither he "who should kill his neighbor and hated him not in times past" could flee for protection. Later the number of these cities was increased to six, three on either side of the Jordan. Once the slayer had reached one of these cities he was safe from the violence of the avenger, but must dwell in the city of refuge until tried before the congregation and until the death of the then high priest. When these conditions were accomplished, the slayer could return to his own home and

[3] Plutarch, *Romulus*, ed. Langhorne, p. 16: "As soon as the foundation of the city was laid they opened a place of refuge for fugitives, which they called the temple of the Asylaean God. Here they received all that came, and would neither deliver up the slave to his master, the debtor to his creditor, nor the murderer to the magistrate; declaring that they were directed by the oracle of Apollo to preserve the asylum fro m all violation. Thus the city was soon peopled for the houses at first did not exceed a thousand." Hegel, *Philosophy of History* (ed. Morris), p. 214, has seemingly taken this story as fact.

city.[4] Such a system as this would protect the homicide from too hasty or summary vengeance while at the same time punishing him by making him a fugitive and exile. Other references to the use of asylum amongst the Hebrews occur in Biblical history. In one instance at least the fugitive seeks protection at the altar, thus implying the existence and recognition of the sanctuary afforded by religion.[5]

Amongst the Greeks we find the right of asylum existing from quite ancient times. Almost every temple afforded protection to criminals, even to those who had committed the worst crimes, and no fugitive could be molested or dragged forth. Nevertheless, they could be starved into surrender and this no doubt was frequently done. Several very notable cases of the violation of the right of asylum occur in Greek history. At Athens the temple of Athena on the Acropolis was a noted asylum, and all seeking refuge there were inviolable. Thus it was that when, about 628 B. C., the followers of Cylon who had fled to this temple for refuge were massacred by the Archon Megacles, the family to which Megacles belonged, the Alcmeonidae, incurred the curse of impiety.[6] Those who took refuge at altars or in sacred places were regarded as suppliants and held sacred as being under divine protection. Another notable instance of violation of the right of asylum is told in the sixth book of Herodotus in connection with the war between the Argives and the Spartans. Cleomenes, the Spartan king, having driven a number of the enemy to take refuge in a sacred place, induced certain of them, by false promises, to come forth and then slew them in cold blood. The ones who remained, learning the fate of their companions, refused

[4] See for the Mosaic law, Exod. xxi, 13; xix, 7, 10, and also Joshua xx, 5, 6.

[5] Case of Adonijah, in I. Kings, ch. i, 50-53.

[6] Thucydides, *Histories*, I, 126, 134; Plutarch, *Solon*.

to come out or surrender and the impious king, therefore, ordered the place to be set on fire. The unfortunate fugitives seem to have perished in the flames or at the hands of their adversaries. Cleomenes, the author of the outrage, was, according to the Argive tradition, punished for his sacrilege by the gods when later he was overtaken by madness.[7]

As in later times in Europe, so in Greece the right of asylum became an abuse rather than a benefit. Asylums became so numerous that they hindered the proper course of justice, and instead of affording a refuge from revenge they harbored criminals of the worst sort. This caused the Athenians to limit the right to such persons as through unpremeditated crime or rash deeds were exposed to cruel or summary vengeance. But many of the other states in Greece were not so wise, and the asylums continued, through the unlimited protection they afforded, to encourage lawlessness and crime, until at length, taught by experience, their right to protect was modified and restricted to special classes of criminals. Being divine in its origin, the right of asylum could not be abolished without sacrilege, but it could be, and was, much limited and restricted. It is said that in time of war the Greek asylums were crowded with suppliants, while in time of peace they were often almost deserted. No better commentary as to the function of such refuges in classical times can be given than this statement, and no doubt the asylums often saved the lives of those defeated by the fortunes of war.

After Roman power had become firmly established in Greece, efforts were made to suppress many of the Greek asylums. Tacitus tells us that in the time of the Emperor Tiberius, all the so-called asylums of Greece were ordered by the Roman Senate to produce legal proofs of their right to exercise the privilege of protecting criminals, and that by this means many were suppressed as they could not comply with the

[7] Herodotus, Bk. VI, ch. 80.

order. This, in all probability, did away with many of the evils attendant on the multitude of asylums which existed in Greece.[8]

The right of asylum amongst the Romans was better regulated and limited than amongst the Greeks. The practice of seeking protection in the temples does not seem to have been so generally resorted to, nor do the Roman sacred edifices seem to have possessed the same rights of asylum as the Greek ones. Roman law, indeed, took little or no account of religious sentiment when it came in conflict with the proper punishment of evildoers and criminals. The right of asylum was, therefore, strictly limited and only afforded protection and immunity until formal inquisition could be made and judgment, based on evidence, given. To the Romans, asylums were places to which the unfortunate or misguided could flee for temporary immunity from violence, and Tacitus expressly remarks that in Rome no criminals fled to the Capitol or to other temples of the city in order to enjoy protection and immunity in the commission of crime.[9]

Under the Empire, however, it was the general practice for criminals and fugitives, especially slaves, who wished for protection, to flee for safety to the statues or busts of the Caesars, although such resort might not do the criminal any real service in the end.[10] In fact the Emperor Antoninus Pius issued a decree declaring that if a slave, in any of the Roman provinces, fled to a temple or to the statues of the Emperors to escape his master's ill-

[8] Tacitus, *Annals* III, 60. Suetonius in his Life of Tiberius (ch. 27) states that all asylums throughout the Roman Empire were abolished by that Emperor. This statement is inconsistent with the more restricted one made by Tacitus, and is probably exaggerated.

[9] "Neque quemquam in Capitolinum aliave Urbis templa profugere, ut eo subsidio ad flagitia utatur." Tacitus, *Annals*, III, 36. Mazzinghi, *Sanctuaries*, 110.

[10] "Ex vinculis ad custodia detentus ad potentioribus." *Digest*, 48, tit. 19, sect. 28.

treatment, then the governor of the province could order such a slave to be sold as if he were not a fugitive.[11]

The right of asylum was never totally abolished by the Romans, but it was made a part of their legal system and a support rather than a hindrance to their criminal procedure. The fugitive would in most cases be taken from the asylum and would make his defense and justification, if any were possible, before the magistrate. Then if the law condemned him he would have to suffer the just penalty; the asylum only saved him from summary and immediate vengeance and afforded a breathing space before trial. Thus we clearly see that amongst the Romans the right of asylum had a more rational development than with the Greeks; a development more consistent with the Roman idea of the state, and with Roman law and custom.

The practice of allowing Christian churches to extend rights of protection to criminals and fugitives within their precincts is said to date from the time of Constantine's Edict of Toleration, 313 A. D. Undoubtedly the introduction of Christianity as the state religion, which soon followed, wrought a great change in regard to the right of asylum. The protection afforded by the Christian churches was greater than that given by imperial law to temples and statues. The custom of resorting to churches soon became well established in cases of wrongdoing, for when, in 392 A. D., Theodosius the Great made a law concerning church asylum, it was to explain and regulate the privilege. Fifty years later another Theodosius, the Younger, made a new law by which the then existing privilege was extended from the altar and nave of the church to the buildings, courts, and parts adjacent, contained within the walls. An enactment of a temporary nature excepted the Isaurian robbers from the privilege.[12] The constitutions of

[11] *Inst. Gaius*, I, 53: *Inst. Just.*, I, tit 8, sect. 2, where the words of the rescript of Antoninus are quoted.

[12] *Codex Theodos.*, lib. IX, 45: "De hiis qui ad ecclesias confugiunt," leg. 4; also lib. IX, tit. 35

Theodosius the Younger were confirmed by Pope Leo I., with the added provision that the steward and advocate of the church should act as inquisitors and examine all persons seeking asylum and then take action on the evidence produced.[13] The early Christian Church was strongly opposed to the shedding of blood and ready to do all in its power to prevent violence which might result in bloodshed. Thus the clergy speedily became the great intermediaries between criminals and those who desired vengeance, and acted as ambassadors of mercy before the throne of justice. Fugitives who had taken refuge in Christian churches were interceded for, slaves fleeing from cruel masters were protected, unfortunate debtors in danger of imprisonment were allowed temporary shelter until a compromise could be reached. All this, no doubt, besides tempering the administration of public and private law, increased the reverence for human life in the popular mind and associated the Church and religion with ideas of sanctity and mercy.[14] But there was another and darker side to the right of asylum during the early Middle Ages, for the privilege seems to have been greatly abused. The Canon law and the decretals of the Popes placed the right of asylum on a far different footing from the Roman law. Certain classes of offenders had been excluded by the Roman codes, debtors, by the law of Theodosius the Great, murderers, adulterers, and committers of

[13] Schaff-Herzog, *Cyclopaedia of Religious Knowledge, vide* Asylum, vol. I. The date 466 A. D. given by these writers is clearly wrong, as Leo died in 461.

[14] Lecky, *History of European Morals*, II., 41-42; see, also, chapter on Right of Asylum in Bingham, *Antiquities of the Christian Church* in Works, Book viii, ch. 2. Theodoric, king of the Ostrogoths, exacted a promise from the masters of fugitive slaves that such slaves as sought sanctuary should not be punished. He allowed a slave one day's sanctuary protection. See on the general subject of the sanctuary protection offered to fugitive slaves, Mazzinghi, *Sanctuaries*, pp. 86-90.

rape by the *Novella* of Justinian.[15] Under these restrictions the early church had exercised and maintained the privilege, and Pope Boniface V. in a decretal of the year 620, had expressly sanctioned the right of churches to protect delinquents.[16] But with the increase of ecclesiastical power in Europe the right of asylum, which had been designed to extend protection to the innocent maliciously pursued, to the injured, the oppressed, and the unfortunate, by granting a delay until the case could be properly tried or adjudged, was so much extended that the most atrocious and guilty of malefactors could be found enjoying immunity within sacred walls and bidding defiance to the civil power. If the Romans had gone to one extreme, then the Christian Church of the Middle Ages went to the other. As early as 441 A. D. the Council of Orange ordered that no fugitive seeking sanctuary should be surrendered, while the synod of Orleans in 511 extended the privilege to the Bishop's residence and thirty-five paces beyond the walls of the building—the *triginta ecclesiastici passus.*[17] Thus, in spite of being limited by secular legislation, to which little real attention was paid, the right of church asylum came to be firmly established in Europe as a Christian custom and institution, and as of importance to the church and clergy generally. It was to remain so throughout the Middle Ages, and into modern times even, until its abuse so far outweighed its use as to render its abolition a necessity.

[15] *Novella*, XVII, c. 7. For other references see *Cod. Just.*, lib. I, title XII; *Cod. Theodos.*, IX, 35, 45. Thirty days' protection was usually allowed. Justinian, *Novella*, XVII, c. 6; Bingham's *Works*, vol. III, p. 207.

[16] Spelman, *Glossarium, vide, Sanctuarium*, 620-25 A. D.

[17] Bingham's Works, vol. III, p. 214, and note.

# CHAPTER I

## AN OUTLINE OF THE HISTORY OF SANCTUARY

Owing to the early Christianizing of Britain it is not at all improbable that the right of church asylum existed in England long before the coming of the Saxons and their subsequent conversion. By some of the mediaeval chroniclers the practice of allowing churches to shelter and protect fugitives is ascribed to a mythical British king, Lucius, who is supposed to have ruled Britain in the second century. But this early period of British history is so obscure, so mythical, and so legendary, that no sure footing for the historian can be found in it, and though the practice of taking sanctuary in churches may have existed amongst the early British Christians, and in all probability did exist, we have no definite or trustworthy record of the fact. Indeed, it is not until the beginning of the seventh century that we find any mention of the right of churches in England to afford protection to fugitives within their walls.

When, in 597 A. D., Augustine with his forty monks landed on the shore of Kent, he probably brought into England a new respect for sanctified places. The north country was being rapidly Christianized by missionaries from Iona and there, also, the protection afforded by churches and shrines must have been recognized. Christianity was soon the national religion of the English, and though the Roman form triumphed over the British at the Council of Whitby, yet both inculcated the respect for holy places and for the sanctity of churches which is the basis of the right of sanctuary. Within a few years of the coming of the Apostle of the Saxons, as

Augustine was called, an explicit reference to church peace occurs in Anglo-Saxon legislation. Soon after his conversion and baptism in 597 A. D., Ethelbert of Kent drew up a series or code of laws, the earliest known Anglo-Saxon code, and in the first of these laws is the enactment that the penalty for violation of church *frith* is to be twice that exacted for an ordinary breach of the peace.[1] Although brief, this reference to the sanctity of churches is important, as showing how quickly they came to be recognized as inviolable.

No further documentary or other evidence as to the existence of sanctuary[2] privilege in England occurs until late in the seventh century. In the Venerable Bede's Life of St. Cuthbert, the holy bishop of Lindisfarne, who died in 687, an explicit reference to sanctuary occurs. This is believed to be the earliest reference to the existence of the custom in the north of England, and it constitutes an important link in the history of sanctuary. As the holy man lay dying, Bede tells us, he requested that his body should be buried on the island of Farne, but the monks of Lindisfarne earnestly desired that his remains should rest in their abbey on the mainland. The aged saint sought by his words to dissuade them, saying: "I judge it to be more suitable to ye also that I should rest there, on account of the incursions of fugitives and of evildoers of every sort who, when to my body they have fled by chance, you will often find it necessary to intercede for with the powerful ones of the time, and also endure much labor on account of the presence of my body."[3] But the monks were not to be dissuaded from preserving such a relic as the body of the saint, and his remains were carefully

[1] Ethelbert, I. cap. i., see Thorpe, *Ancient Laws and Institutes of the Anglo-Saxons*, vol. I, p. 3.

[2] The term sanctuary (*sanctuarium*) was that commonly used in mediæval England, and is still used to-day, to denote sacred places, and came to be applied to the custom or privilege of taking asylum.

[3] Bede, *Opera Historica*, vol. II, Vita S. Cuthberti, p. 121.

guarded at Lindisfarne as the most precious treasure the church there possessed. In the ninth century, when all northern England was overrun by the Danish invaders and the island of Lindisfarne attacked, the pious monks fled with their precious relic, which, finally, was deposited in the cathedral church at Durham. There the shrine of St. Cuthbert became one of the most famous places in England for sanctuary-seekers to resort to.

In the south of England the immediate successors of Ethelbert of Kent have not left us any definite sanctuary legislation. It is not until the time of Ine, king of Wessex, at the close of the seventh century, that we have further mention of the privilege existing. In or about the year 680 Ine published a code of laws, the fifth enactment of which provides definitely for sanctuary-seekers. By this act any person who had committed an offense worthy of death could save his life by fleeing to a church, and then making satisfaction for his crime as right required. If any person who had committed a crime punishable by stripes took sanctuary, the punishment would be remitted.[4] This law of Ine's was a distinct advance on previous known legislation in England, and by many is regarded as marking the real origin of the legal right of sanctuary in England. There is much to be said for this view as Ine's law is undoubtedly the earliest known piece of English legislation in which sanctuary is definitely referred to, yet almost a century earlier Ethelbert had prescribed a heavy penalty for breach of church frith, and the previous history of the right of asylum would lead one to suppose that wherever there were Christian churches, there the privilege of asylum would also exist.

But the religious element is not the only one to be found in the early history of sanctuary in England. Another ele-

[4] Laws of Ine, cap. 5, Thorpe, *Ancient Laws*, I, 26.

ment played an important part and must be taken into account, namely the King's Peace. There were two kinds of peace prevalent in Anglo-Saxon times, the Peace of the King, or royal peace, and the Peace of the Church, Church *frith* or *gryth*. The latter peace belonged to every church or sacred edifice; the former was the peace and protection of the central authority and could be granted by the king to specially favored places. Generally speaking, the places endowed by royal charter with the King's Peace were the great Benedictine abbeys, or nunneries, scattered throughout England. Thus, frequently, monastic edifices, as abbey churches, priories, chapels, and other such places, possessed both the peace belonging to the Church and that belonging to the Crown. On the whole, however, it was rather on the peace of the Church than on that of the king that the English sanctuaries, and the fugitives who sought their shelter, relied. As I have said, many of the great monasteries possessed both kinds of peace and so were endowed with sanctuary rights both *de facto,* on the score of religion, and *de jure* on the score of possessing royal charters granting them special sanctuary privileges and immunities. This gave rise to a group of great chartered sanctuaries throughout England, standing distinct from the general class of churches and consecrated places, and possessing greater powers, privileges, and immunities.

Ine's law concerning those who fled for refuge to churches doubtless remained in force, in Wessex at least, through the reigns of succeeding kings. Almost one hundred years later, we find Alfred the Great, in 887, enacting that fugitives fleeing to a church to escape the consequences of crime were to have protection for three days. In another and later law of Alfred's, seven days instead of three were allowed. Anyone who harmed a fugitive during these days of grace was to make *bot* or compensation for the injury, according to the gravity of the offense, and also pay one hundred and twenty shillings to the kindred of the sanctuary-seeker in

atonement for the breach of church *frith.*[5] In the year 930 a law of King Athelstan allowed the fugitive to remain nine days within the sanctuary of the king, of the church, or of a bishop; or three days in that of an ealdorman, of an abbot, or of a thane, and during this period the person of the fugitive was to be inviolable.[6]

King Athelstan is also said to have granted to the church of St. John of Beverley its first charter of liberties, in which important sanctuary privileges are conceded. The sanctuary limits were to extend a league, or something over a mile, from the church door, in every direction, the bounds to be marked. Within this space all fugitives were to be safe from molestation under penalty of heavy fines, which increased with the proximity to the high altar of the violation. The distance from the limits to the altar was divided into six parts. No slaves fleeing from their masters were to be suffered to dwell for any time within sanctuary, but the canons were to endeavor to reconcile such slaves to their masters—"*quia servus pecunia domini sui est.*" Nor was any freeman to be allowed to bring into sanctuary moneys belonging to his master. Such in brief was the constitution of a great charter sanctuary in Anglo-Saxon times.[7] In 974 we find King Edgar granting similar immunities, as regards sanctuary-seekers, to the Abbey of Ramsey,[8] and these are but two examples of many such grants by the Saxon kings. Monasteries were everywhere springing up in England, and charters containing sanctuary clauses were being constantly granted. Such concessions did

[5] Laws of Alfred, cap. 2, Thorpe, *Ancient Laws*, I, 61; Mazzinghi, *Sanctuaries*, p. 12, quotes the law at length and comments on the interpretation of it.

[6] Laws of Athelstan, III, 6, IV, 4.

[7] *Sanctuarium Dunelmense et Beverlacense*, Surtees Society, pp. 97-101.

[8] *Cartul. Monast. de Ramseia*, R. S., vol. II, 57, 71.

much to make the institution of church asylum more widespread and general. They also helped to create a number of recognized sanctuary places where fugitives gathered, being sure of protection and sustenance from the religious of the place.

By one of King Ethelred's laws, made towards the close of the tenth or at the beginning of the eleventh century, a sanctuary-seeker who had committed a capital offense had either to give the proper *wer gild,* or compensation for the life of his victim, or to go into perpetual thraldom or imprisonment. If he were able to free himself, a surety or bondsman had to be furnished for future good conduct or, in default of such surety, a solemn oath to keep the peace and live an honest life had to be taken. Should this oath ever be broken, sanctuary would not be allowed a second time.[9] A further elaboration of the laws regarding sanctuary took place in 1014, when a fixed and definite scale of payment for violations of church peace was drawn up. All churches were not equally sacred in the eyes of the law, seemingly, because for violation of the peace of a chief minster or cathedral the penalty was to be five pounds, of a minster of the second class one hundred shillings, while only half that sum was exacted in the case of violation of an ordinary minster, and lowest of all stood the violation of a field church which was assessed at the small sum of thirty shillings. Anyone who committed murder within church walls was *botless,* and no compensation could redeem him from the consequence of his sacrilegious act, and he would be slain, unless he took sanctuary in so awful and sacred a place that his life would be granted to him by the king, on payment of the greatest possible legal fine both to God and to man.[10]

[9] Laws of Ethelred, VII, caps. 16, 17, 18, Thorpe, I, p. 333.

[10] Laws of Ethelred, IX, *anno* MXIIII, Thorpe, 340 ff. Instead of five pounds fine by English law Canute's Laws give eight pounds, *cf.* Mazzinghi, *Sanctuaries,* p. 12.

Violations of sanctuary, however, do not seem to have occurred at all frequently during the Anglo-Saxon period. One case of wholesale violation of sanctuary is reported as occurring in 1004. In that year certain Danes took sanctuary in a monastery at Oxford to escape from English foemen. These latter were so enraged at this that they burnt down the monastery building which sheltered the fugitives, who perished in the flames. For this violation of sanctuary, restitution was later made in the most ample fashion.[11]

The sanctuary legislation of the Danish king, Canute, is similar in substance to that of Ethelred the Unready, and so needs no special comment.[12] In the reign of Edward the Confessor no authentic legislation concerning sanctuary exists, as the so-called Laws of Edward the Confessor really belong to the twelfth century or later. Edward is said, however, to have granted sanctuary privileges to certain abbeys, the most important claimant for this honor being Westminster. But even the authenticity of the Westminster charter is questioned, and we cannot definitely attribute any sanctuary legislation to the reign of the Confessor.

Before bringing to a close this part, dealing with sanctuary during the Anglo-Saxon period, it might be well to say a few words concerning another practice of the time which was destined to become closely connected with sanctuary. This practice was that of outlawry, which, combined with the right of asylum, was in all probability the origin of abjuration of the realm. As sanctuary and abjuration were closely allied throughout the Plantagenet period, some notice of outlawry is necessary. Any man who in Anglo-Saxon times committed a grave offense or wrong and fled from punish-

[11] William of Malmesbury, *De Gestis Pontificum*, R. S., pp. 315-16, gives the story of this violation.

[12] Laws of Canute, II, 39, 41, pt. 1, 48 pt. 2, 66 pt. 1; in Schmid, *Die Gesetze der Angelsachsen*.

ment was generally proclaimed an outlaw. He became an outcast from society, beyond the pale of the law's protection, and his goods were forfeited to the king. Anyone could kill him with impunity, and his safest place of resort was beyond the seas.[13] Outlawry, therefore, was equivalent in most cases to exile or banishment. Some Saxon outlaws, it is true, took refuge in forests or lonely swamps and gathered other outcasts and criminals about them. Such bands would ravage the country around, until suppressed by force of arms and either slain, captured, or compelled to flee to another retreat. It will be easily seen that in outlawry the elements existed which went to make up the later oath of abjuration or foreswearing of the realm, administered to sanctuary-seekers who chose to avail themselves of it. This oath had, as we shall see, a similar effect in many ways as outlawry, for it made the swearer dead to the law and forced him into exile as a punishment for his misdeeds. There seems to be little doubt, therefore, that in Anglo-Saxon outlawry we have the germ and chief element of the later *abjuratio regni*.[14] The mediaeval institutions of England adapted themselves readily to existing needs, and the combination of the Anglo-Saxon church *frith* with outlawry produced later, in the twelfth and thirteenth centuries, the more complicated system of sanctuary and abjuration, which became a part of the legal machinery of Anglo-Norman government.

The coming of the Normans to England, and the consequent transfer of power and possessions to their hands, wrought many changes in English institutions. Amongst other things it inaugurated a new stage in the development

[13] Réville, *Abjuratio regni*, Revue Historique, Sept., 1892; Pollock and Maitland, *History of English Law*, I, 49. II, 590-91.

[14] Réville, *Abjuratio regni*, Rev. Historique, Sept., 1892, discusses this question very fully and shows excellent ground for outlawry being the chief basis of abjuration.

of the privilege or right of sanctuary. The record of institutional advance under the early Norman kings is, however, meager and unsatisfactory. Church asylum was no doubt a part of Norman law previous to 1066, and finding sanctuary established in England, also, the Norman kings recognized the institution in their laws. Although there is a scarcity of authentic legislation for the reign of William the Conqueror, we know that his policy was to confirm the existing laws and customs of his Saxon predecessors, which were known as the *Laga Aedwardi.* By so doing he hoped to conciliate the mass of the English people by keeping up the appearance at least of continuity with previous kings. It was not his policy to alienate a people whose support he needed against the powerful Norman nobles and great feudatories. In a set of Anglo-Norman laws, which some have attributed to William the Conqueror and which are known as the *Leis Williame,* but which probably belong to the twelfth century, though they may embody the spirit of earlier legislation, we find a law that carries on the spirit of Anglo-Saxon sanctuary legislation. It provides that anyone who removes a fugitive from an abbey or great church is to be fined one hundred shillings and is to restore the person of the fugitive to the church or abbey. Should the church be only a parish one, the fine was to be twenty shillings; if a chapel, only ten shillings was exacted.[15] This law reproduces, practically, the previous legislation of Ethelred and Canute, but it can hardly be considered as authentic. In the Statutes of William the Conqueror, given in the *Textus Roffensis,* no mention of sanctuary or sanctuary rights occurs, but the

[15] Wilkins, *Concilia,* I, 313: *"E si aucune meist main en celui ki la mere iglise requerist, si ceo fust u eveque u abeie u iglise de religiun, rendist ceo, qu'il aureit pris, e cent souz le forfeit; et de mere iglise de parosse, XX souz, e de chapele, X souz."* Réville, *Abjuratio regni,* Rev. Hist. 1892, p. 11, quotes this law as if it were genuine. See Pollock and Maitland, *Eng. Law,* I, 102-3.

seventh chapter confirms the old laws and would, therefore, confirm previous sanctuary legislation.[16]

The first William was a pious man in a practical way. In the year 1067 he founded Battle Abbey, near Hastings, on the field of Senlac. It was designed as a grateful memorial for his victory over the Saxons and was destined to be one of the greatest and wealthiest of Benedictine abbeys. The foundation charter of Battle Abbey is one of the most comprehensive documents of the time. Amongst the numerous privileges and immunities granted to the monks is that of affording full and complete sanctuary to fugitives and criminals: "If any thief or murderer or person guilty of other crime, fleeing for fear of death, should reach this church, then in nothing let him be punished, but, free in every way, let him be dismissed"—so ran the words of the charter.[17]

For the period of the later Norman kings there is no really authentic sanctuary legislation. That the privilege was well established we know from stories of sanctuary seeking found in the chroniclers of the time, and we can surmise that the institution, like other institutions and customs, was being changed and modified to suit the exigencies of Anglo-Norman law. In this connection it will perhaps be well to say a few words concerning the sanctuary clause in the so-called *Leges Edwardi Confessoris*. These laws, at one time supposed to belong to the early part of William the Conqueror's reign, have since been found to be a twelfth century compilation by some unknown Norman. The first division of this code relates to the powers and privileges of the church, and the fourth section, entitled *"De reis ad ecclesiam fugientibus,"* relates to sanctuary privilege. Those in sanctuary are not to be removed save

[16] Stubbs, *Select Charters*, pp. 83-84.

[17] Camden, *Brittania*, London, 1600, p. 277, "Si quis latro vel homicida, vel aliquo crimine reus timore mortis fugiens ad hanc ecclesiam pervenerit, in nullo laedatur, sed, liber omnino, demittatur."

by the priest or his ministers. Fugitives who enter the house of the priest, or even the porch of it, are to be safe. No fugitive, however, is to retain stolen property; should he bring any such with him it must be restored to the owners thereof. In cases when a criminal resorts several times to the church or priest's house for protection, then he is finally, after restoring any stolen property, to forswear the province, and should he venture to return no one is to receive him unless by sanction of the king.[18]

In these last sentences we have, certainly, an early reference to abjuration in a limited form and under not very precise conditions, but yet it is clearly stated that sanctuary-seekers are to forswear the province. It is, therefore, a step towards the legal process, *abjuratio regni,* whereby in the thirteenth and later centuries the fugitive who had taken sanctuary abjured the realm.

Passing from the Norman period in which the information concerning sanctuary is meager and the legislation hardly authentic, we come to the long period of the Plantagenet kings. Immediately the sources of information become both more numerous and more reliable. We see the use of sanctuary spreading rapidly and the practice becoming a thoroughly national institution, respected by the law and by the people generally. The early Plantagenet kings were great founders of abbeys and priories, and many new chartered sanctuaries were added to those already existing, so that the number of peculiar or special sanctuaries increased greatly. This naturally gave rise to a distinction being drawn between the general sanctuaries and the peculiar, or specially chartered ones. English church law and common law, as well as the

[18] Roger de Hoveden, R. S., II, p. 220, the part relating to abjuration is as follows: *"Et si moro solito latro taliter egerit, et si forte fortuiter ad ecclesias vel ad sacerdoti frequenter evaserit, ablatione restituta, provinciam forisjuret."*

custom of the country, had long recognized, and continued to recognize, every church, chapel or consecrated place as having protective rights over criminals fleeing to them. Usually, however, general sanctuaries only sheltered capital offenders who fled thither to save their lives and confessed to felony, after which they would abjure the realm. But on the other hand, royal charter, ecclesiastical privilege, or in some cases the frequent resort of offenders, gave special privileges to certain places as recognized peculiar sanctuaries. Such places could protect all classes of criminals, save those who escaped from the sheriff, or other royal officer, after having been delivered up for execution; even those who had committed high or petty treason were safe within the walls of most of the chartered sanctuaries.[19] In many cases fugitives to these peculiar sanctuaries might remain there for life, though if they wished they could abjure the realm before the royal coroner.[20] Together with the increase in number of sanctuaries came a corresponding increase in the definiteness of legislation relating to them and to sanctuary privileges. In the Constitutions of Clarendon, Henry II. expressly provides that the chattels of those who are in forfeiture to the king and seek sanctuary are not to be kept in the church or churchyard, against the law of the realm. They belong to the king whether found without or within

[19] The following list taken from Archaeologia, vol. VIII, p. 41 (article on *Right of Asylum*, by Rev. Samuel Pegge), includes all the most important chartered sanctuaries: Abingdon, Armethwaite (Cumberland) Beaulieu, Battle Abbey, Beverley Colchester, Derby, Durham, Dover (St. Martin's Priory), Hexham, Lancaster, St. Mary le Bow (London), St. Martin's le Grand (London), Merton Priory, Northampton, Norwich, Ripon, Ramsey, Wells, Westminster, Winchester, York. Thus there were at least twenty-two peculiar sanctuaries.

[20] *Sanctuarium Dunelmense*, Pref., pp. xviii, 30-31.

churches.[21] Sanctuary privilege itself was recognized always, as regarded the life and limb of the individual. It was to harmonize this right of churches to afford personal protection with the right of the state to punish offenders that certain definite rules of procedure came into being.

We have already spoken in various places of the oath of abjuration of the realm as being associated with sanctuary in its developed form. The subject of abjuration, however, has been so ably treated already that it is hardly possible to throw new light on its origin and development.[22] There is little reason or cause to doubt that abjuration of the realm developed from certain customs already existing, chief of which was outlawry. Now, taking this as the basis of abjuration, we can see how the custom developed by a gradual process of evolution. A fugitive would seek sanctuary where he would be safe from the secular arm. Some remedy was clearly needed for such a state of affairs, and the remedy chosen was to make him an official outlaw while sparing his life and person. Sanctuary-seekers were, therefore, required either to submit to trial or take an oath by which they abjured the realm forever. On the latter condition they were allowed to depart unharmed from the precincts of the sanctuary to take their journey into exile. The rational conclusion is, therefore, that abjuration of the realm was born of the old procedure of outlawry, in which the germs are to be found, and of the universal right of asylum common among all Christian nations. The English form of ecclesiastical immunity was an

[21] *Constitutions of Clarendon*, cap. 14. "Catalla eorum qui sunt in forisfacto regis non detineat ecclesia vel cimiterium contra justitiam regis, quia ipsius regis sunt, sive in ecclesiis sive extra fuerint inventa." Stubbs, *Select Charters*, p. 140.

[22] See the excellent and scholarly article by the late M. André Réville, Revue Historique, Sept. 1892, on the subject of *L'abjuratio regni: histoire d'une institution anglaise.*

adaptation to national institutions and needs, and abjuration of the realm became a peculiarly English institution. In so far as abjuration is to be found in Normandy we must consider it to have been derived from England, an insular institution transported to the continent and not a continental practice brought into the island by foreign invaders.[23]

Abjuration of the realm is first definitely met with at the close of the twelfth century and beginning of the thirteenth, though it may have existed earlier. In a primitive form we have seen it mentioned in the *Leges Edwardi Confessoris*, which were probably compiled towards the close of Henry I.'s reign.[24] There it is only the province that is to be forsworn, and no particulars of the process are given.[25] Abjuration in its fully developed form is inseparably connected with the office of coroner. The origin of this office is somewhat obscure, though in recent years new and valuable light has been thrown on the question.[26] Coroners probably existed in the time of Henry II. and perhaps as early as Henry I.'s reign. The office assumed definite shape, however, early in the thirteenth century. The duties of a coroner were those of a local administrative official. At first he was allowed to hold Crown Pleas, though later this right was withdrawn, and he took cognizance of all crimes committed in his district and held inquest on the bodies of slain men. In addition, he exercised important functions in connection with criminals and fugitives who had taken sanctuary and wished to abjure the realm. Associated with the coroner in his police duties were the men

[23] Revue Historique, Sept., '92, pp. 11-14.

[24] Pollock and Maitland, *Eng. Law*, I, 103-4. These laws have by some been attributed to Glanvil, but internal evidence alone would show that he was not their author.

[25] Roger de Hoveden, R. S., II., p. 220.

[26] Gross, *Introduction to Select Cases from the Coroners' Rolls*, Selden Society; also *Political Science Quarterly*, VII, no. 4, p. 662.

of the four neighboring vills. When a fugitive appeared and took sanctuary in any ordinary church, it was their duty to guard against his escape, should there be no pursuers. They were, also, to notify the coroner of the district who would then come and take the culprit's confession and enter his name and other particulars in his register. The Coroners' Rolls furnish a great deal of valuable evidence as to sanctuary-seekers. After making confession the criminal was allowed forty days of grace, at the expiration of which time he had either to abjure the realm or stand trial in the royal courts. The oath of abjuration, while not compulsory, was generally taken in preference to the alternative of coming under the heavy hand of justice. The oath of abjuration was taken before the coroner, and abjurers were allowed to depart unharmed. Clothed in a white robe, which bore the red cross of mercy, these unfortunate beings journeyed along the king's highway, turning neither to the left nor to the right, for fear of being slain, until at last, footsore and weary, they would reach the port of embarkation. There they took the first available ship across seas. Their oath of abjuration bound them never to set foot in England again, save by licence of the king;[27] their property escheated to the crown and their chattels were forfeited. In later times the abjurer was branded with the letter A on the brawn of his thumb, as a mark and witness of his ignominy and punishment.[28]

Those who had taken sanctuary and would neither abjure nor surrender were usually starved into submission after the forty days of grace had elapsed. This resort to starving out

[27] Abjuration was sometimes pardoned and revoked. See one case in Mazzinghi, p. 34; on p. 44 Mazzinghi also cites a case in which a returned sanctuary man and abjurer is arrested.

[28] Réville, *Abjuratio regni*, Revue Historique, 1892, pp. 15-16, Gross, *Select Cases from Coroners' Rolls*, Introd.; Statute 4 Ed. I., and 21 Henry VIII., cap. 2.

sanctuary-seekers was sanctioned by the law but not by the Church. The English Church resented the interference of the civil power with its sanctuary privileges and immunities and it made repeated efforts to assert and establish the right of extending complete protection to fugitives who sought sanctuary. Any interference by seculars was in contravention to church liberties and privileges, and it was a frequent complaint at ecclesiastical councils that the immunity of the Church was not strictly observed. In 1257, on the occasion of a money grant to the king, the prelates and dignitaries of the Church presented to Henry III. a list of grievances which called for redress. One clause of this document related to the right of sanctuary. It stated that unfortunate fugitives within churches were so strictly besieged that food and drink could not be taken to them, and even clerks were debarred from ingress. In other cases fugitives were violently withdrawn from sanctuary or enticed out by promises and then taken and hung, or wickedly slain, and all this in contravention of the custom of the realm whereby, after forty days of grace, sanctuary-seekers were to be allowed to abjure and depart into exile.[29]

Sanctuary-seeking was exceedingly common in mediaeval England. Each year hundreds of offenders sought the protection of the Church. But the protection of the church could not always be relied on, and violations of sanctuary are numerous. According to the Church, all who took sanctuary were to be protected and sustained; according to the State, sanctuary-seekers were not to be allowed to escape, but must be closely watched and guarded. Church and State, therefore, were liable to come frequently into conflict.

[29] Matthew Paris, *Chronica Majora*, vol. VII, p. 357. "Aliquando fugitivus eripitur violenter, aliquando postquam secundum regni consuetudinem terram abjuravit—a publica strata positis insidiis extrahitur, suspenditur, et damnabiliter quando interficitur."

For a considerable period the sanctuary procedure developed in the eleventh, twelfth, and thirteenth centuries remained unchanged. Edward the First, in 1285, made special regulations for London as to the watch and ward of sanctuary-seekers. One hundred shillings was the fine imposed on those responsible for a criminal who had escaped from sanctuary. In connection with these regulations, numerous fines, inquiries, and pardons are met with in the London records.[30]

In 1316 Edward II. enacted that abjurers, on their way to the port of embarkation, must not be molested and that sanctuaries were to be respected in that no fugitive to a church was to be slain unless found outside of sanctuary limits.[31] It is doubtful, however, if this law wrought any change in the situation. Infractions of sanctuary still continued, and the clergy still kept up their complaints against encroachments on ecclesiastical immunity and hurled anathemas against the guilty persons.

Owing to the undue extension of the privilege of sanctuary it soon began to be a great abuse and a clog on justice in England. As early as 1278 Edward I. was forced to regulate sanctuary-seeking by statute, and the goods and property of fraudulent debtors who took sanctuary were declared answerable and could be seized.[32] In the year 1378 the doctors and justices of both canon and civil law gave it as their opinion that sanctuary privilege should be curtailed and should properly extend only to cases of wrongdoing which, if punished by the law, would entail loss of life and limb.[33] Opposition

[30] *Munimenta Gildehallae Lond.*, R. S., *Liber Albus*, pp. 86, 96, etc.

[31] *Statutes*, 10 Ed. II., c. 7; Réville, *Abjuratio regni*, Rev. Hist., Sept., '92, p. 29.

[32] *Statutes of the Realm*, I, 48, 6 Ed. III.

[33] Mazzinghi, *Sanctuaries*, p. 46; *3 Parl. Roll*, 2 Rich. II., m. 51 a. "That neither in case of debt, account or single trespass was sanctuary demandable unless it involved injury to life and limb."

to sanctuary privilege was even more apparent in the fourteenth century. It was becoming a greater and greater hamper on justice and was freely claimed and utilized by debtors seeking to escape from their creditors, and by other fraudulent persons. Under Richard II. the temporal lords proposed that sanctuary privilege should be confined to great offenses involving life and limb and should not extend to debtors and other dishonest people.[34] They were not able to carry their point in regard to the great chartered sanctuaries, and during the fifteenth century debtors continued to receive shelter, particularly at such places as Durham and Beverley.[35] A compromise was, however, effected, whereby debtors who took sanctuary were enforced to swear that they did so with no dishonest motive, but in many cases this oath was either not exacted or was evaded.[36]

In 1402 we find the Londoners accusing the college of St. Mary's le Grand with providing a refuge and sanctuary for bandits.[37] This began the war against privileged places of sanctuary resort, especially in the metropolis. In 1425, in 1429, in 1454, and finally in 1478, the Commons sought to modify and abridge the Church's right to afford sanctuary. At the same time efforts were made, in some cases successfully, to lessen the sanctuary privileges of some of the great abbeys.[38] The clergy defended church privilege with vigor, but it was a losing cause which they upheld. Yet for the moment any great changes in regard to sanctuary were staved off, nor is it probable that the Commons desired the practice

[34] Archaeologia, vol. VIII, pp. 32-33.

[35] *Sanctuarium Dunelmense et Beverlacense*, Surtees Soc., Introd, pp. xxv, xxvi.

[36] Archaeologia, vol. VIII, p. 33.

[37] Revue Historique, Sept. '92, p. 32.

[38] Mazzinghi, *Sanctuaries*, pp. 45, 46, 50; Reville, Revue Historique, Sept. '92, p. 32 ff. Both these writers have dealt fully with these efforts.

altogether abolished. They held rather that the institution was incompatible with the proper administration of the law and, therefore, wished to limit it as much as possible. In any case the Church was able to prevent any radical changes being made, and the close of the long period of the Plantagenet kings saw sanctuary and abjuration still flourishing in England.

The climax in the struggle between Church and State over the question of sanctuaries and sanctuary privileges came in the time of the early Tudors. The abuse and evil of unlimited protection of criminals could no longer be endured, and under the systematic and thorough rule of the Tudor kings many of the evils and abuses attendant on sanctuary seeking were remedied. The first measure of reform, however, emanated only indirectly from the crown. In 1467, at the request of King Henry VII., Pope Innocent VIII. granted a bull concerning abuse of sanctuary. This bull made several important changes in the existing order of things by declaring that any sanctuary-seeker who issued forth to commit further offenses against the law would forfeit his right to protection. Such a one could then be seized even within the precincts of sanctuary walls, should he have resorted thither. In the second place, the benefit of sanctuary was only to extend to protection of life and limb and not to personal property and belongings, while, thirdly, all persons accused or suspected of high treason who took sanctuary could be looked to by keepers, appointed by the king, so that they might not escape. This important bull, which did much to limit and restrict the privilege of sanctuary in England, was confirmed by the next Pope, Alexander VI., in 1493, and later by Julius II., in 1504.[39]

The sudden breaking up of religious privileges and immunities, especially in the case of the regulars, under Henry

[39] Rymer, *Foedera*, vols. XII, 541, XIII, 104.

VIII., did much to change sanctuary in England. Even before the dissolution of the monasteries the question was entered upon, and the existing practices altered and revised. By an Act of 1529-30, abjurers, immediately after confession and before taking the oath, "were to be branded by the coroner with a hot iron upon the brawn of the thumb of the right hand with the sign of the letter A." This was "to the intent that they might be better known among the king's subjects to have abjured."[40] The next year it was enacted, further, that on account of the strength of the realm being much diminished through the deportation of numerous sanctuary-seekers who each year abjured the realm, by this means lessening the population and further harming the country by instructing foreigners in archery and disclosing the secrets of the realm, therefore, persons who henceforward took an oath of abjuration were not to be allowed to leave the realm, but were to repair to some English sanctuary, chosen by themselves, and there live the rest of their days, unless pardoned by the king. Instead, therefore, of the old oath of *abjuratio regni*, formerly in use, a new one was substituted whereby the fugitive swore before the coroner to conform to these new conditions. If any sanctuary man, thereafter, left his place of retreat, unless by royal license and pardon, he was liable to be apprehended and tried for his original offense in the royal courts and was deprived of any further benefit of sanctuary.[41] Such a statute as this marked a very definite effort at change and reform in the matter of sanctuary privilege and the procedure connected with it. Sanctuary-seekers were placed under the more direct control of the central power, and while they might enjoy sanctuary for a lifetime they would be kept as prisoners serving a life sentence. Even after this new and radical legislation,

[40] 21 Henry VIII., cap 2; Mazzinghi, *Sanctuaries*, p. 32.

[41] Act of 22 Henry VIII., c. 14.

sanctuaries were an abuse and evil in England. Especially was this the case in the eyes of Henry VIII. and his advisors, when persons accused of high treason took sanctuary and so escaped punishment. Finally, by successive acts of legislation, in 1534 and 1536, all persons accused or suspected of high treason were debarred from the privilege or benefit of sanctuary.[42] So far from being surprised at such legislation, however, we can only wonder that it is not met with sooner in English history. The fact that it is not, speaks for the power and privileges enjoyed by the clergy of the fifteenth and early sixteenth centuries, even when Roman influence and power were on the wane in England.

Another of Henry VIII.'s sanctuary laws put in force certain rules concerning sanctuary dress and equipment. All dwelling withing sanctuary limits were to wear a distinctive badge or mark on their upper garments. Such mark to be at least ten inches in length and the same in breadth and was to be assigned by the governor or head of the sanctuary. Failure to comply with this regulation involved the forfeiture of all sanctuary privileges. In addition, no sanctuary man was to carry a sword or other weapon, save a meat knife, and even that was only to be worn at meal time, and no one was to issue from his lodgings during the night, that is, after sunset and before sunrise. If this last rule were broken, the third offense would subject the breaker to loss of his sanctuary privileges.[43]

The great break between Henry VIII. and the Papacy resulted in the dissolution of the English monasteries, and, naturally, the number of sanctuaries was generally decreased. The class of great chartered sanctuaries almost disappeared, for, by a statute of 1540, the privilege of sanctuary was taken away from all places formerly possessing it save parish churches

[42] Acts of 26 Henry VIII., c. 13, and 28 Henry VIII., c. 7.

[43] Act of 37 Henry VIII., c. 19.

and churchyards, cathedral churches, hospitals, collegiate churches, and dedicated chapels, used as parish churches, and the sanctuaries at Wells, Westminster, Manchester, Northampton, York, Derby, and Launceston.[44] This reduced the number of sanctuaries by half.

When the Reformation became completely established in England, the abuse of sanctuary-seeking was lessened still more. Sanctuaries were no longer allowed to harbor murderers and other atrocious criminals. Nevertheless the custom continued, and fugitives from justice still sought an asylum in privileged places. An act of 1603-04 further regulated the practice, however, and finally, in 1624, it was enacted that no sanctuary or privilege of sanctuary should thereafter be admitted or allowed in any case.[45] This statute put an end, practically, to all sanctuaries in England or sanctuary privilege. Certain privileges were still claimed in connection with the counties palatine of Durham and Chester, where the royal writs could not run, and in some of the less reputable districts of London, notably that known as Alsatia. In 1679, however, the writ of habeas corpus was declared in force in any county palatine or privileged place,[46] and, in 1697 every so-called sanctuary was suppressed and sanctuary ceased to exist in England.[47]

[44] 32 Henry VIII., c. 12. Persons guilty of murder, rape, highway robbery, burglary, arson or sacrilege were excluded.

[45] 1 James I., c. 25, 21 James I., c. 28. Archaeologia, vol. VIII, p. 46.

[46] 31 Charles II., cap. 2, sect. 10.

[47] Act 8 & 9 Will. III., cap. 26.

## CHAPTER II

### SANCTUARY AND ABJURATION IN MEDIÆVAL LAW

The English law writers of the thirteenth and fourteenth centuries deal exhaustively and minutely with the procedure to be followed in cases of sanctuary and subsequent abjuration. Bracton has much to say of the matter in his work *De Legibus Angliae,* and his imitators and followers, the compilers of Fleta and Britton, deal almost as fully with the subject. The Mirror of Justices, that elaborate, but untrustworthy, work attributed to Andrew Horne, town clerk of London, and written probably in the time of Edward I., has much to say on sanctuary; much that is interesting, but which can hardly be relied on as exact.[1] Then, too, the statutes of the realm, in Edward I.'s day, regulated sanctuary and abjuration, especially the interesting *Tractatus de Officio Coronatoris* of 1276, which contains valuable information. From these and other less important sources, too numerous to mention in detail, we can gain accurate and extensive information as to the legal customs and usages appertaining to sanctuary and abjuration.[2]

The crimes for which in the eyes of the law men could claim privilege of sanctuary were those, only, of a serious

[1] As for example the statement: "King Henry II., at Clarendon, granted unto them (*i. e.,* sanctuary-seekers) that they should be defended by the Church for the space of forty days, and ordained that the town should defend such flyers for the whole forty days, and send them to the coroner at the coroner's view." Cf. *Sanct. Dunelmense,* Pref., p. xx., Mazzinghi, *Sanctuaries,* p. 29.

[2] While seeking to give a clear and succinct account of sanctuary and abjuration in mediaeval law no attempt is here made to go exhaustively into the subject. In Coke's *Institutes,* pt. III, p. 115, a list of the numerous statutes relating to sanctuary and abjuration can be found.

nature. Murder, homicide, unpremeditated violence, or assault, such were the chief; debtors and fraudulent persons were not legally entitled to sanctuary privileges and immunities. Nor were common thieves, robbers and murderers, exiles, outlaws, or perjurers to be sheltered from the hand of the law, but could be removed without sacrilege. The privilege was designed for persons who by misfortune or mischance did some unpremeditated wrong and were not habitual criminals. Having once committed a serious offense the criminal's first thought would be how to escape from vengeance. The hue and cry would be raised and his nearest and safest refuge would be a church or other sacred edifice. A fugitive to sanctuary was not to be hindered or obstructed by neutral parties, provided he declared his intention of taking sanctuary. In most cases he had to reach the church itself before he was safe from pursuers, though in 1316 we find Edward II. making a law forbidding those who were guarding sanctuary-seekers from abiding in the churchyard, unless necessity, or danger of the fugitive escaping, compelled them to do so, and also providing that criminals who had taken refuge in churches should be allowed access to the churchyard as well.[3] In the case of some of the great chartered sanctuaries, the immunity extended as far as a mile from the church.[4]

When the fugitive had reached the church he was watched and guarded by his pursuers or by the men of the four neighboring vills, part of whose duty it was to see that persons did not escape from sanctuary. The villagers were, also, to summon the coroner who would interview the fugitive and receive and register his confession.[5] According to Britton, the confession and registration had to take place in the presence

[3] Act of 10 Ed. III., *Statutes of Realm*, I., 173.

[4] *Sanct. Dunelmense*, Surtees Soc., Pref., pp. xv, xvi, Mazzinghi, *Sanctuaries*, pp. 26-27.

[5] Britton, pp. 17, 62; Pollock and Maitland, *Eng. Law*, I, 565, 566, II, 590.

of witnesses and of representatives from the four vills. In this he is not borne out, however, by Bracton and Fleta, who only speak of the confession and registration being made before the coroner or his deputy. [6]

In most cases the coroner seems to have been prompt in appearing, when called on to parley with sanctuary-seekers. In some cases he would appear the day after the fugitive came to the church, but more frequently three or four days would elapse. The longest interval we have been able to discover on record was in the case of a certain William of Coventry, of the county of York, who took sanctuary on the ninth of December, 1348, and was interviewed by the coroner and called on to make confession on the twenty-first of the same month, an interval of twelve days. [7] This is an exceptional instance. The coroner on arriving at the church would question the criminal, demanding why he had taken sanctuary and whether he did not wish to put himself on the peace of the king. The following is a fourteenth century example of how these interviews took place: "And upon this Edmund Foster (the coroner) found the said John living in the aforesaid church and he inquired of the said John for what cause he held himself in the aforesaid church and whether he wished the peace of the Lord King or no." [8]

Once a criminal was safely lodged in sanctuary, the law allowed him forty days of grace. This period of forty days probably dated from the time that he took sanctuary, though one authority at least makes it date from the time of appearance

[6] Bracton, R. S., vol. II, *De Corona*, cap. XVI, pp. 392-93; Fleta, cap. 29, *De Abjurationibus*.

[7] Réville, Revue Historique, Sept., 1892, p. 24, quotes this case from *Placita Coronae*, 22 Ed. III. Pollock and Maitland, *Eng. Law*, I, 566, cite a case, however, in which the coroner refuses to appear unless paid a mark and the township has to watch the church forty days.

[8] *Coram Rege Roll, 8 Rich. II.*, quoted by Réville, Revue Historique. Sept., '92, p. 25.

of the coroner.[9] Should he wish to do so, the fugitive could take the oath of abjuration before the forty days had run their course, but he had to decide one way or the other at the end of forty days, either to abjure the realm or stand his trial.[10] Innumerable cases of abjuration of the realm occur in the English records and furnish reliable evidence as to the procedure followed. The oath to abjure the realm—*abjuratio regni*—was never compulsory on fugitives to sanctuary, but was generally taken by criminals in preference to submission to royal justice and trial courts. By abjuring the realm the criminal would escape with life and limb, although thenceforth an exile and outlaw as regarded England.

For the purpose of administering the oath, the coroner had again to be called in. Kneeling before this officer of the law, at the door of the church, the abjurer solemnly swore to leave the realm of England and never to return save by license of the king or his heirs. The exact form of the oath can not be exactly determined, as it seems to have varied according to the age and, perhaps, according to the place where it was taken. The following oath taken from Bracton's work is probably as good an example as any that can be found:

*"Hoc audite justitiarii vel o vos coronatores exilio ab regno Angliae et illuc iterum non revertar nisi de licentia domini regis vel haeredum suorum, sic me Deus adjuvet."* [11]

[9] Bracton, vol. II, 393; Fleta, cap. 29, p. 45. Britton has *"Et s'il demeurent outre les XL jours de cel houre qe le corouner vient a eux premerement,"* p. 63.

[10] Bracton, II, 393; Mazzinghi, p. 37, gives a case in which the fugitive goes on the King's Peace and stands his trial.

[11] Bracton, *De Legibus Angliae*, vol. II, p. 393. The form given by Britton, perhaps a slightly later version, has an additional phrase in it; that given in the *Statutes of the Realm*, I, 250, differs materially as regards language and is probably later still. In taking this oath before the coroner the abjurer was, according to most authorities, to appear clothed in sackcloth. See Mazzinghi, *Sanctuaries*, p. 30.

Later on, the oath of abjuration appears to have become much fuller and longer on account of the criminal swearing to perform certain things formerly given him as directions by the coroner.[12]

In connection with the administering of the oath of abjuration, an interesting point of procedure has been raised in regard to fugitives who had fled to another county, and especially a county palatine, and taken refuge there.[13] By whom, in such a case, was the oath of abjuration to be administered? Was the would-be abjurer to be transferred from where he had taken refuge to the county from which he hailed, or where the crime had taken place, or was he to take the oath of abjuration from the local coroner? Cases of sanctuary-seekers from other counties are several times met with in the records, but few if any of these are reported as abjuring.[14] In the majority of cases, however, criminals would flee to the nearest sanctuary, which would in all probability be in the same county and therefore abjure before the local coroner. Should men from other counties take sanctuary, they would probably be treated as ordinary fugitives, and if they wished to abjure they would do so before the local coroner. But the evidence that we possess is so scanty that no definite rule of procedure can

[12] See, for example, *Sanctuarium Dunelmense*, Pref., p. xvii, xix, where an oath of confession and abjuration is given, taken from Rastall, *Statutes*, Art. Abjuration, sec. 4. Rastall was chief justice of Common Pleas in the reign of Queen Mary. The oath he gives belongs to the reign of a King Edward, probably it is Edward IV., as abjuration of the realm was done away with in the case of sanctuary-seekers by statute, 22 Henry VIII., c. 14.

[13] Lapsley, *The County Palatine of Durham*, pp. 255-54, discusses this question in connection with sanctuary and abjuration in Durham.

[14] *Sanctuarium Dunelmense et Beverlacense*, Surtees Society, contains many examples of *extrinseci* taking sanctuary; cf. Lapsley, *Palatinate of Durham*, p. 254.

be laid down. But by a statute of 1512 it is provided that taking sanctuary in another county involves process of trial in the county where the indictment lay.[15] This act seems to indicate some existing diversity of opinion concerning the procedure in regard to sanctuary-seekers who were *forinseci* or *extrinseci*.

The sanctuary-seeker having once taken the oath became an abjurer and had to leave England as quickly as possible. The port at which he was to embark, the road by which he was to travel, and the time to be allowed for the journey, had all to be decided before he could depart. Concerning the choice of the port for embarkation, some difference of procedure apparently existed. The law writers, without exception, state that the abjurer could choose his own port, while on the other hand, the statutes and the year books tell us that it was the coroner's duty to assign the port.[16] As this latter view is of later date, it is easily supposable that the custom changed somewhat during the last part of Henry III.s reign. In fact, recorded cases of abjuration of the realm show this change at work. Thus a certain unknown man who had taken sanctuary in the church of Southoe in 1267, "abjured the realm before the coroner of the county of Huntingdon, electing for himself the port of Dover."[17] A few years later, in 1276, we find John, son of William of Westfield, abjuring the realm, "and the port of Dover was assigned to him" by the coroner.[18] The main part of Bracton's work on the laws of England seems, in all probability, to have been written between 1251 and 1258, and in it therefore, we have the older usage given. Britton and Fleta follow Bracton as does the Mirror of Justices.

[15] Act of 4 Henry VIII., cap. 2, sec. 2, *Statutes of Realm*, III, 49, 332.

[16] Bracton, II, 193; Fleta, 45; Britton, p. 64; *Statutes of the Realm*, I, 59, 250; *Year Book*, 30 Ed. I., R. S., p. 509.

[17] *Select Cases from the Coroners' Rolls*, ed. Gross, Selden Society, I, 67.

[18] *Ibid.*, p. 75.

The Statutes of the Realm and the Year Book for 1301-02, give the newer and later custom. It is interesting to note in this connection that the *Statutum Walliae*, which was a set of police and governmental regulations for Wales drawn up under Edward I., after the conquest of Wales, expressly provided that the coroner should assign the port to the abjurer.[19] This became the legal rule, therefore, though in practice the abjurer was frequently allowed to make choice of his port, and the coroner would then assign it to him. Should the abjurer desire to go to Scotland, rather than across seas, a border town or village took the place of the port of embarkation, and he was directed by the coroner to pass through the place assigned.[20]

Before leaving on their pilgrimage of exile, abjurers were given directions as to the road they must follow, and a specified time, depending on the distance to be traversed, was set for their journey. Finally they were given a few words of warning and direction, as to their conduct *en route*, by the coroner. No abjurer was ever to leave the king's highway nor remain more than two nights in any one place; he must attend solely to his own business while on the journey, take the most direct route to the port and embark there as soon as possible within the allotted time. If no ship could be found by which he might cross the seas, then he was to take sanctuary again and await a more favorable time.[21]

If a sanctuary-seeker who wished to abjure took the oath before his forty days of grace had expired, he was not obliged

[19] *Statutes of the Realm*, I, 59. For sanctuary and abjuration in Wales, see Mazzinghi, *Sanctuaries*, pp. 55-56.

[20] Bracton, II, 393-94, Réville, Rev. Historique, '92, pp. 15 ff.

[21] Bracton, II, 393-94; Fleta, 45. Chapter 29 of Fleta contains, perhaps, the best account of Abjuration. In the Palatinate of Durham abjurers were transferred from constable to constable until they reached the port assigned them; see in *Sanctuarium Dunelmense*, pp. 30-31.

to depart at once, but could remain until the end of the period allowed by law. Then, however, if having abjured he refused to depart, or if he had declined to take the oath, as was sometimes the case, and refused to surrender, he was liable to be tried and punished for his wrongdoing. Bracton lays down the law on this point very explicitly, but says that such a one must not be dragged out forcibly from the sanctuary, for that would be sacrilege. He goes on to say, however, "the ordinary of the place, such as the archdeacon or his official, the dean or the priest, may do this, and ought to compel him to go forth, for the sword ought to assist the sword and the execution of the law works no injury, and when such a person will not go forth unless compelled, there is a vehement presumption against him that he is an evildoer, and to maintain him in the church will be nothing else than to act against the peace." [22]

In spite of Bracton's judicial reasoning, the ordinary, or other clerical head, seems to have been unwilling in most cases to force criminals from sanctuary. Cases of criminals being delivered over to the hand of the law after having taken sanctuary are exceedingly rare. If the ecclesiastical power would not hand over the criminal, then the only way to get him out of sanctuary was either to commit sacrilege and forcibly remove him, or by cutting off all the food supply to force him to surrender or, as was now and again done, to set fire to the church or other sanctuary and compel him either to perish in the flames or surrender.[23] Sometimes, also, fugitives were enticed out by false promises of pardon or escape and taken or slain by their foes. Instances of all these various infringements

[22] Bracton, *De Legibus Angliae*, R. S., II, 397.

[23] Setting fire to the church seems only to have been tried as a last resort when all other measures had failed. It was a practice of doubtful recourse.

of sanctuary privilege are met with in mediaeval annals. According to Britton, all fugitives who abode in sanctuary after the forty days had elapsed were debarred thereafter from the favor of abjuration and deemed as felons convict. Laymen, under penalty of forfeiture of life and limb, and clerks, under pain of banishment from the realm, were forbidden to give them meat or drink or to have any communication with them. In this matter Britton is borne out by Fleta, who lays down the law to practically the same effect.[24]

Under these circumstances most sanctuary-seekers were wise enough to take the oath of abjuration. This though itself a penalty and a punishment, saved life or limb which else might have been forfeited to the law. Once a criminal had taken the oath there could be no drawing back; it was compulsory for him to leave the realm. On his dismissal by the coroner the abjurer started forth on his journey armed only with a wooden cross. He went bareheaded and was clothed in a long white robe which rendered him conspicuous among mediaeval wayfarers. All persons were prohibited from molesting abjurers while on their journey, as long as these remained on the king's highway. The men of the four nearest vills were to see that abjurers passed unmolested and unharmed and were to take vengeance in case any enemies interfered or used violence.[25] In 1267 we have record of the case of a certain unknown man who had abjured the realm at Sudbury, in Bedfordshire, and was on his way to Dover when attacked and slain on the highway. The hue and cry was immediately raised after the murderers, from township to township, and their apprehension and arrest ordered, while the coroner, who was summoned to the scene, held an inquest on

[24] Britton, I, 65; Fleta, cap. xxix, p. 45.

[25] Fleta, cap. xxix. *De Abjurationibus*, is especially full of detail. Britton, I, 64; Bracton, II, 393; *Statutes of the Realm*, I, 59.

the body of the slain man, with the help of the men from the four nearest vills.[26] If the fugitive had been slain while seeking to escape and had been off the highway the case would have been very different, and the men of the four vills, or enemies of the abjurer, who might be lying in wait for such an occurrence, would be perfectly justified in pursuing him, and either capturing him or taking his life.[27] In 1276, such a case in fact does occur. A certain John, son of William of Westfield, of whom we have already heard as an abjurer, was on his way to Dover and fled from the highway and sought to escape. He was pursued and captured by the villagers and on the hue and suit of the whole township was beheaded.[28] Such was almost certain to be the fate of any abjurer who sought to escape while on his way to the port.

Upon arrival at the assigned port the abjurer was to embark as soon as possible. If no ship was there, ready to sail, or if the wind or weather were adverse, he was to wade into the water each day until it came above his knees,[29] as a witness of his desire and willingness to fulfill his oath and cross the sea. During the time of waiting to embark, the beach was to be his resting place, but should he be unable to get passage within the time allotted, he was allowed to travel safely back to the sanctuary from which he had come, still carrying his cross and wearing the white robe. There he would await a more favorable time and opportunity to embark. Thus abjurers were well guarded and protected from violence, even after the time allotted them to depart from the realm had expired.

Then as now the port of Dover was the great place of embarkation for the continent, and so, as most of the abjurers

[26] *Select Cases from the Coroners' Rolls*, Selden Society, vol. I, p. 9.

[27] Fleta, p. 45; Britton, I, 64.

[28] *Select Cases from Coroners' Rolls*, I, 37.

[29] Fleta, *De Abjurationibus*, p. 45, says "usque ad collum," however.

elected to cross to France, Dover was generally assigned to them. The time allowed for a journey to Dover varied with the distance to be traversed, but in no case does it ever seem to have been long. In the time of Edward III. only nine days were allowed a criminal to go on foot from Yorkshire to Dover, as we learn from the case of William of Coventry who, in 1348, took sanctuary in the church at Thwing, and after confessing to various robberies, abjured the realm, "and nine days were given to him to reach the port of Dover in order to be carried over the sea." [30]

There were certain classes of criminals and fugitives to whom the privilege of abjuration was absolutely refused. No one who had already been tried and sentenced, and had then escaped to sanctuary, could take the oath of abjuration, unless by special favor, but had to undergo punishment.[31] This prohibition was rarely revoked, and the case of a woman, in the time of Edward III., who, after being condemned to death for robbery, managed to escape and take sanctuary and was then allowed to abjure, is an exceptional and unique one.[32] Other classes of criminals to whom abjuration was not possible were those guilty of high treason and misdemeanor, those who had been outlawed, or those who having once abjured had escaped and wished to abjure again, to be allowed to escape the vengeance of the law. Such persons had to submit themselves to the law whether found within or without sanctuary walls.[33] Neither sanctuary nor abjuration could be claimed by those unhappy persons who had committed murder or homicide within the sacred precincts of a church or other consecrated

[30] Pike, *History of Crime*, I, 232, quotes this case from the *Placita Coronae*, 22 Ed. III.

[31] Bracton, II, 395, deals with this point fully.

[32] Revue Historique, Sept., '92, p. 26. Réville notes this case particularly and quotes from Fitzherbert's *Chronicle*.

[33] Bracton, II, 395; Revue Historique, Sept., 1892, pp. 20 ff.

place. Thus in 1366 a woman who had slain a clerk in a London sanctuary, and then claimed right of protection in the place, was compelled by order of the bishop of London to leave the sanctuary. She was arrested and three days later was hung for her crime.[34]

Clerks, or members of the clergy, were another class who were not allowed to abjure. Instead, when they had taken sanctuary, they were handed over to the ecclesiastical courts to be punished for spiritual offenses, or to the secular courts if they had committed offenses amenable to common law. By claiming benefit of clergy they could always escape the worst consequences of their crimes. In 1257 we find the prelates of England, in their *Articuli*, presented to Henry III., complaining that he forced clerks to abjure. The king in response promised to remedy this abuse and to render all clerks to their proper judges.[35] Some years later, in 1286, we find the Bishop of Lincoln writing to Edward I. requesting that a certain Richard of Scarborough, a priest, who, being accused of robbery, had taken sanctuary and wished to abjure, and so escape the consequences of his crime, might be seized and handed over to the church for punishment.[36]

The oath of abjuration entailed severe civil disabilities on those taking it, for abjurers became, to all intents and purposes, outlaws. Their goods and chattels were forfeited to the crown and their lands escheated to the lord from whom they were held. The Parliament Rolls of Edward I.'s time give three forms of letters of escheat, because a man was outlawed, or was hung, or because he abjured—"*quia utlagatus, vel sus-*

[34] *Croniques de London*, Camden Soc., p. 142.

[35] Matthew Paris, *Chronica Majora*, vol. VI, 355-56; Revue Historique, Sept., '92, p. 20.

[36] Rev. Hist. (1892), p. 20, quoting from *Rot. Clausarum*, 14 Ed. I.; see Prynne, *Records*, vol. III, 355.

*pensus, vel quia abjuravit.*"[37] If, however, any person abjured the realm through fear of being punished for a felony of which he was not guilty, but which he thought better to confess and abjure for, and if afterwards it were proved that he had not committed the aforesaid felony, then, according to Britton, the abjuration would be rendered null and he might return in safety to England. Nor were the heirs of such a person to be disinherited, though the goods and chattels of the abjurer would necessarily be forfeited to the crown by reason of their owner's flight and abjuration. In like case, if abjuration were made on account of trespass on royal game or other preserves, no one was to be disinherited of his lands or tenements, but forfeiture of goods and chattels took place.[38] All abjurers took a solemn oath never to return to England save by license of the king or of his heirs and in case any abjurer ventured to return he laid himself open to capital punishment.[39]

The procedure in regard to sanctuary and abjuration which has been outlined in this chapter was that in general use in the thirteenth, fourteenth, and fifteenth centuries, and in fact down into Tudor times.[40] Under Henry VII. and Henry VIII., however, various changes and modifications in regard to sanctuary and abjuration of the realm took place, and the latter king abolished the practice of abjuring the realm and substituted that of confining fugitives in well-recognized and guarded sanctuary places. One of the last and most curious uses the oath of abjuration was put to was, when, in the reign

[37] *Rotuli Parl.*, vol. I, p. 52 b.; see, also, Revue Historique (Sept. 1892), p. 18.

[38] Britton, pp. 65-66, also, Bracton, Fleta, and *Statutes of Realm*, as already quoted.

[39] Bracton, vol. II, 395.

[40] The following case occurs as late as 1524: "John Brewer killed Will Bull at Castle Combe with a sword, and then ran to the church. He spoke with the coroner and abjured the realm." Mazzinghi, pp. 69-70.

of Elizabeth, Roman Catholics and Protestant dissenters, who might be convicted of having refused to attend the divine service of the church of England, were required to abjure the realm in open court. If they refused to take the oath of abjuration, or, if, having abjured, they ventured to return, they were to be adjudged felons and to suffer death without benefit of clergy.[41] Later, by the Toleration Act, Protestant dissenters were exempted from this somewhat barbarous provision, but it was not until 1791 that Roman Catholics, convicted of recusancy, ceased to be liable to be called on to abjure.[42]

Abjuration in connection with sanctuary had practically disappeared by the year 1625, but all vestiges of it which remained were swept away by the Act of James I. of that year, by which all privilege of sanctuary and abjuration consequent upon it was abolished and done away with.[43]

[41] Act of 35 Eliz., cap. 1, *Statutes of Realm*, vol. IV.

[42] Act of 31 Geo. III., see *Statutes of Realm*, III.

[43] Sanctuary and Abjuration in the City of London: The usages in regard to sanctuary and abjuration in the city of London differed from those in the realm at large. As soon as a criminal had taken sanctuary in any London church it was the duty of the watch and ward to see that he did not escape. If the watch proved negligent, and the criminal escaped, the penalty was a fine of one hundred shillings. Exactly who the responsible persons were, however, was in the thirteenth and fourteenth centuries a matter of dispute between the citizens of London and the king's justices. In 1295-96, 24 Ed., I., we find the sheriffs of London held responsible for the escape of certain murderers from sanctuary, and they are fined accordingly. (*Liber Albus*, R. S., pp. 101, 281.) This responsibility seems to have been repudiated by the sheriffs, for in the next reign the justices are found giving their opinion that the sheriffs and citizens of London are wrong in alleging that they are not responsible for escapes from sanctuary, while, in 1321, Edward II. grants a pardon to the city for neglecting to keep watch over those who have fled to the city churches for sanctuary. (*Liber Custumarum*, R. S., 376-77.)

Another peculiar thing in connection with sanctuary procedure in London is that, during the thirteenth and fourteenth centuries, the citizens

did not have the right of electing their own coroner. No coroner, properly speaking, existed for London. Instead it seems to have the practice for the chamberlain of the city and the sheriffs, sometimes assisted by the aldermen, to exercise the coroner's functions. (Gross, *Coroners' Rolls*, Introd., p. xxiii.) Thus as early as the year 1228 we find the oath of abjuration taken by a sanctuary-seeker before the civic chamberlain and the sheriffs. (*Liber Albus*, p. 86.) This practice seems to have continued throughout the thirteenth and into the fourteenth centuries. It was decided, however, as early as 1232, 18 Henry III., that in case the chamberlain were absent the oath could be taken before the constable of the Tower of London and the sheriffs and aldermen of the city. (*Liber Albus*, p. 96.)

In these particulars, therefore, London stands by itself as an example of peculiar procedure as to sanctuary and abjuration.

## CHAPTER III

### THE CHARTERED SANCTUARIES

The chartered sanctuaries of England formed a class by themselves. In connection with many of them, peculiar customs and usages existed which are not to be found in use elsewhere. As a rule the sanctuary jurisdiction of these specially privileged places was more extensive and their procedure more formal than in the case of the ordinary church or chapel. At Ripon, at Beverley, and at Hexham the sanctuary limits extended at least a mile on every side of the sacred edifice. The boundaries of the *church frith* were marked in most cases by stone crosses erected by the side of the highways leading into the town.[1] These showed the fugitive that he had reached a place of safety and warned his pursuers not to trespass farther. Gradations of fine, increasing with the proximity to the altar, were generally in force. At Beverley the distance from the outer limits to the altar was divided into seven sections, the penalty being made, in proportion, to increase from eight pounds for violation within the first limit up to one hundred and forty-four pounds for the sixth, while to violate the seventh of the divisions was to commit a *botless* or unremissible offense and entailed death on the offender.[2] At Hexham a similar gradation of penalties was in force, and at both of these great sanctuaries the most sacred and holy refuge was the *frith stol* or chair of peace. The *frith stol* probably existed in many of the English sanctuaries, for in name and use it was inseparably

[1] *Sanctuarium Dunelmense et Beverlacense*, p. 99. Archaeologia, vol. VIII, p. 25.

[2] *Sanctuarium Dunelmense et Beverlacense*, p. 100.

connected with the right to afford protection to fugitives. The church at Hexham still possesses an ancient Norman *frith stol*.[3] This chair, usually of carven stone, stood beside the high altar and like the *fertre* or shrine, containing the relics deposited behind the altar, it insured complete and absolute protection to the sanctuary-seeker. Anyone who violated the sacred precincts of the altar committed an unpardonable offense, one for which no money payment could atone. The *frith stol* at Beverley, in Yorkshire, bore the following inscription, carved in Roman capitals, to signify its use:

> HAEC SEDES LAPIDEA FREED STOOLE DICITUR, I. E. PACIS CATHEDRA AD QUAM REUS FUGIENDO PERVENIENS OMNIMODAM HABET SECURITATEM.[4]

Even to-day, in various parts of England, curious stone crosses inscribed with the word SANCTUARIUM are to be met with. Such crosses probably marked the way to a sanctuary and served to guide fugitives.[5] An interesting record of the middle of the fifteenth century gives us the limits prescribed by the Bishop of Worcester for the cathedral sanctuary there. These limits were to extend, "from the great door of the cathedral charnel house, by the great stone wall of our palace to the great gate of the said palace," and then to continue through the whole circuit of the place.[6]

On arriving at a chartered sanctuary the seeker for protection had, in most cases, to go through certain formalities of admission. Usually he had to make confession of his crime to one of the sanctuary officials, in some cases to the royal

[3] *Ibid.*, Pref., x, where a woodcut of the Hexham *frith stol* is given.

[4] *Sanct., Dun. et Bev.*, Pref. xiv.

[5] Mazzinghi, *Sanctuaries*, p. 23-24; *Sanct., Dun. et Bev.*, Pref., xv. For the cross belonging to the Benedictine nunnery of Armethwaite, see Hutchinson, *Hist. of Cumberland*, I., 192.

[6] From a document dated 1460, quoted by Mazzinghi, *Sanctuaries*, p. 25.

coroner, to surrender all his arms, and place himself under the supervision of the religious head of the place, bishop, abbot, or prior. He then swore to observe the rules and regulations governing those dwelling in sanctuary, and a small fine or admission fee was paid to one or other of the sanctuary officials of the church or convent. His name, domicile, occupation, confession of crime, the instrument used, the name of the victim, or victims, and other particulars, were registered in the church or sanctuary register, kept for that purpose. Several of these registers have been published, others are still in manuscript, and they form our most valuable sources of information on the procedure in use in the English charter sanctuaries.

The rules and the formalities in force at various sanctuaries often differed greatly, but the following interesting extract from the Beverley Register gives a very fair idea of the general method of procedure on the admission of a fugitive:

> The Bailiff (*i. e.*, the Bailiff of the Liberty of St. John of Beverley) should receive the oath of those seeking the liberty of Saint John of Beverley. Then the clerk of the court (*curiae*) should write and set down their names in the book of the court, questioning each one as follows:
>
> "What man he killed and wher with, and both their names, and then gar him lay his hand upon the booke, saying in this wise: Sir, take heede on your oth—Ye shalbe trew and feythfull to my Lord Archbisshop of Yorke, Lorde of this towne, to the Provost of the same to the Chanons of this Church, and all other ministers thereof.
>
> "Also ye shall bere gude hert to the Baillie and XII governors of this town, to all burges and comyners of the same.
>
> "Also ye shall bere no poynted wepen, dagger, knyfe, ne none other wepen, ayenst the Kynges peace.

"Also ye shalbe redy at all your power, if there by any debate or stryf, or oder sothan (sudden) case of fyre within the town to help to surcess it.

"Also ye shalbe redy at the obite of Kyng Adelstan, at the Dirige, and the Messe, at such time as it is done at the warnyng of the belman of the towne, and do your dewte in rynging and for to offer at the messe on the morne. So help you God and thies holy Evangelistes." And then gar him kiss the book.

And under these circumstances the bailiff or his deputy should receive from each petitioner for the aforesaid liberty a fee, *viz.*, ij s. iiij d. and the clerk of the court or his deputy should receive a fee, for inscribing the same in the book, *viz.*, iiij d.[7]

In the Beverley register the description or occupation of the sanctuary-seeker, his residence, and the place and mode of his crime were regularly entered.

Having once been admitted into a sanctuary, fugitives were, as a rule, remarkably well treated. At Beverley and at Durham, in particular, was this the case. In some instances, as at Beverley, Beaulieu, and Westminster, sanctuary-seekers of noble or high birth were given special attention and lodged in the dormitory or in some house within the refectory court.[8] Even the ordinary sanctuary-seeker, at Beverley at least, was well received, and was lodged and fed for thirty days. Meals were served in the refectory, and the fugitive entered fully into the life of the place. If the canons could not make peace between the sanctuary-seeker and his pursuers inside of thirty days, then he was safely conducted,

[7] *Sanctuarium Dun. et Bev.*, p. iii, for the original draft of this process and oath which is partly in Latin and partly in English.

[8] Mazzinghi, *Sanctuaries*, p. 27; *Sanct. Dun. et Bev.*, Pref., and pp. 100-101. Some churches seem to have had rooms over the door or porch for the lodgement of sanctuary-seekers.

by land or by water, to the borders of the county of York and then allowed to seek safety in fresh flight. If anyone came a second time for protection he was to be received and treated as before. But if for a third time he fled for his life to the church, then he was to become a perpetual servant of the church, because his life and limbs had for the third and last time been preserved to him.[9] The Beverley register does not contain the names of any sanctuary-seeker who by thrice resorting thither became servants of the church community of St. John.[10] This does not imply, however, that no one ever did so. The fact that some criminals saved their lives by donning the religious habit seems to be proved to have been the case in other parts of England if we are to judge from a letter of Archbishop Peckham, of Canterbury, in which he says: "For to the crown belongs not only cruelty and rigor of justice, but still more pity and mercy. By which the Holy Church, by the King's will, saves evildoers by sanctuary of the church, by orders and by the religious habit, as appears in the North Country where murderers, after their crime, betake themselves to the great abbeys of the Cistercians and are safe." [11]

The sanctuary afforded by the shrine of St. Cuthbert, in the cathedral church at Durham, was frequently taken advantage of, and the dying words of the aged saint that criminals of every

[9] *Sanctuarium Dun. et Bev.*, pp. 100-101; Mazzinghi, *Sanctuaries*, pp. 27-28.

[10] The following interesting note is taken from Mazzinghi, *Sanctuaries*, p. 89: "Baron de Maseres, Archaeologia, vol. II, p. 313, thought we might in part refer the origin of slavery in England to the institution of sanctuaries. He supported his view by the charter of an early Saxon king to Croyland, which entitled the abbots to take as slaves all who fled to sanctuary there." The charter to Croyland is, however, a forgery.

[11] Letter of Archbishop Peckham to Robert Malet, *Registrum Epistolarum Johannis Peckham*, R. S., III, 995.

sort would flock to his shrine proved true. Durham became one of the most popular places for fugitives to seek refuge at, and with Beverley and Hexham made up the group of three great northern sanctuaries. The city was the capital of the Palatinate, but the protection afforded by the sanctuary was not confined to natives of the county, for persons from every part of England could repair thither and rely on the immunities of the place to protect and save them.[12] These fugitives were almost as well provided for as at Beverley, after somewhat similar formalities as to admission had been complied with. All persons seeking sanctuary were to apply for admission at the north door of the church, which bore the famous sanctuary knocker, and above which were two small chambers where the gate-keepers slept in order to admit sanctuary-seekers at any hour of the night. When anyone was admitted the bell in the Galilee, or outer chapel, tolled forth the news that a fugitive had arrived. Bell-ringing, in fact, played an important part at Durham as, up to 1503 at least, the sanctuary-seeker had himself later to toll another bell as a formal sign or token that he prayed sanctuary. Before this, however, he was required to declare in the presence of witnesses the nature of his offense with other details which, with his name and place of residence, were entered in the register. The entry of the declarations of the sanctuary-seekers at Durham is fuller than at Beverley. In many if not in most of the cases these declarations were made before the chancellor of the cathedral, who seems to have been the proper person to receive them, though in his absence the sub-prior, or some one of the clergy, could act. The culprit having confessed his crime with all details as to names, places,

[12] *Sanctuarium Dunelmense*, Surtees Society, Pref.; Lapsley, *County Palatine of Durham*, pp. 253-54. "Free access to the shrine was regarded by the people of the bishopric as a valuable right, and was included in the charter of liberties which they obtained from Bishop Bek." See *Registrum Dunelm.*, R. S., III., 64.

instruments, and so on, and the entry having been made, he was admitted to privilege of sanctuary, after tolling the bell as related above. Orders were issued by the prior to provide him with a gown of black cloth, on the left shoulder of which was St. Cuthbert's cross, in form like that of St. Andrew, in yellow. He was lodged over the south door of the Galilee where he had a *graete* or bedstead allotted him and for thirty-seven days he was fed and maintained by the church authorities.[13] When this period had elapsed it is not clearly stated what would happen. In all probability, if the sanctuary-seeker felt it unsafe to venture forth, the coroner of the Bishop of Durham would be called in and the fugitive would confess and abjure the realm.[14] The following case, the only one of its kind recorded, gives one a good idea of the procedure:

> "Memorandum; that on the 13th day of May, A. D. 1497, one Colson of Walsingham, Durham, detected in theft and by reason of this same theft taken and thrown into prison and there detained, finally escaped from prison and fled to the cathedral church of Durham on account of the immunity there existing, and whilst he stood there, close to the shrine of St. Cuthbert, he asked to have a coroner assigned to him. To whom, indeed came John Raket, coroner of the Ward of Chester in Strata (sic), and to him the same Colson confessed the felony, and by corporeal oath swore to leave the realm of England with as much despatch as possible and never to return."

This oath he took at the shrine of St. Cuthbert in the presence of several witnesses amongst whom is mentioned the

[13] *Sanctuarium Dunelmense*, Pref., p. xvi, and cases given by Mazzinghi, *Sanctuaries*, p. 28.

[14] *Sanctuarium Dunelmense*, Pref., xvi-xvii; Lapsley, *County Palatine of Durham*, p. 253.

sacristan of the church. By reason of his oath of abjuration all Colson's personal belongings seem to have been forfeited to the said sacristan and his office, so that the said Colson was commanded to strip himself of all his garments—*usque ad camisiam*—"even to the shirt," and to deliver them to the aforesaid sacristan. This was a mere formality, however, as when that official had received the garments in full possession he gave back and freely remitted to the abjurer all his clothes and belongings. After this ceremony, Colson left the church and was delivered by the sheriff to the nearest constable, and then transferred from constable to constable until he reached the port of embarkation. All the time he carried in his hand a white wooden cross, as a fugitive and abjurer. He was always to be sent forward in this strange pilgrimage, and on reaching the port was to take ship and never return.[15]

In another part of this essay a list has been given of most of the great English chartered sanctuaries.[16] All such places possessed very special privileges and immunities, and Beverley and Durham, about which more is known and published, are but examples of the class in general. Beaulieu Abbey in Hampshire was a place of very frequent sanctuary resort, as were also St. Martin's Priory at Dover, and the Abbey at Westminster. The third of the great northern sanctuaries, Hexham, was another place of frequent resort. It was the great sanctuary for the English side of the border and had an interesting and romantic history. Originally, Hexham had been the Saxon foundation of Hagulstad and in the eighth and ninth centuries had possessed a church admired for its architectural beauty. But like many another noble building the church of

[15] Case no. lxx., *Sanctuarium Dunelmense*, Surtees Society, pp. 30-31.

[16] *Ante*, p. 21 note. The most popular of these chartered sanctuaries seem to have been the following, Beaulieu, Beverley, Durham, Dover (St. Martin's Priory), Hexham, St. Martin's le Grand (London), Norwich (St. Gregory's), and Westminster.

Hexham, then already known as a sanctuary place, was destroyed by the Danes in the year 875. For over two hundred years no attempt to rebuild it was made, but in the early part of the twelfth century a new edifice arose and, under the name of Hexham Priory became one of the great ecclesiastical centers of the north.

The canons of the Augustinian priory were privileged to offer protection to all fugitives, and Hexham became the great sanctuary resort of the border so that at the time of the dissolution of religious houses, the Archbishop of York, Edward Lee, pleaded hard with Cromwell to leave Hexham untouched on account of the loss and injury its doing away with would entail.[17]

The attack on the privileges and immunities of the chartered sanctuaries seems to have begun towards the close of the fourteenth century, in the reign of Richard the Second. The sanctuaries of Westminster and St. Martin's le Grand in London were especially objected to, but though the sanctuary protection they afforded was modified in 1377, yet it was decreed that the immunities of Holy Church should be respected. No guard was to be set by the lay power within the sanctuaries, nor were fugitives in their bounds to be under undue constraint. Nevertheless, those charged to guard against the escape of fugitives were to perform their duty well and securely, setting their watch outside of sanctuary bounds.[18]

One of the most notable cases in sanctuary annals was the attack made by Parliament on the privileges and immunities, in regard to the protection of criminals, claimed by the great abbey of Westminster.[19] It arose in the year 1378 out

[17] *Sanctuarium Dunelmense et Beverlacense*, Pref., p. xv., Mazzinghi. *Sanctuaries*, pp. 26, 27, 99.

[18] *Rotuli Parliamentorum*, Record Comm., II., 369, III., 276.

[19] Mazzinghi, *Sanctuaries*, p. 46, has dealt with this case at some length.

of complaints made by the prelates in the House of Lords as to the violation of the sanctuary at Westminster by armed men, who had slain two fugitives within church walls. The whole question of the protection afforded by the abbey charter was brought up. The clergy presented one petition pleading their side and the laymen replied to it with the following characteristic declaration as to the abuse of sanctuary at Westminster:

> "May it please your Majesty, and his noble council, for charitys sake, to consider the great damage which many of your loyal subjects have received wrongfully by means of the franchise, which the Abbey of Westminster, under color of general privileges contained in certain charters from your noble progenitors, has from time to time usurped with respect to fugitives to Westminster, some of them debtors, some flying thither with their masters' property, and others in different ways relying on the said franchise, may it please you farther to cause a due interpretation to be obtained as to in what the said privileges consist before God and in reason, in order to resume all ambiguities, to the ease and quiet of your said Majesty's subjects, that no more mischiefs and inconveniences may henceforth arise from the said franchise, seeing that the said interpretation belongs of right to your Royal Majesty, and that the Holy Church should neither maintain nor give ground to suppose it supports what is false or sinful."[20]

The ball having thus been set rolling, other complaints poured in and the answer given by the king's council recognized that the right of sanctuary had been abused at Westminster in that fraudulent debtors and others had found

[20] Translated from Norman French, Mazzinghi, p. 43; see *Rot. Parl.*, III., 50-51.

shelter there and so victimized their creditors. An investigation was ordered to be made by masters in theology and doctors of both civil and canon law, as well as by the king's justices and other learned men, as to the privileges contained in the charters granted by previous kings to Westminster.

Charters from Edgar and from Edward the Confessor were produced and read, and, acting on the advice of the committee of investigation, the king, through his advisers, pronounced judgment, in the presence of the Abbot of Westminster who had been allowed to plead for his privileges and immunities. The king's award was in reality a compromise, for while "no one for the future should by virtue of any such general privileges or others contained in the same charters, have any immunity or franchise within the church, abbey or place of Westminster, in any case before mentioned (*i. e.*, as to fraudulent debtors) or similar ones," yet it was expressly provided that sanctuary for felony should still exist, and in consideration of the great affection of the king for Westminster, and on account of his reverence for the noble body of Edward the Confessor, who had been canonized, and because other of his predecessors there reposed, "it is the will and intent of the King by the advice aforesaid, that those, who by fortune of sea or fire, robbers or other mischief without fraud or collusion shall have been so impoverished as to be unable to pay their debts and shall wish to enter the said sanctuary to avoid imprisonment of their bodies, may, and shall be in such a case suffered to, abide safely and freely in the said sanctuary, and there have personal immunity to the intent that they may in the meantime be sufficiently raised up to enable them to satisfy their creditors."[21]

This compromise did not give much satisfaction to the opponents of the chartered sanctuaries though, doubtless, it

[21] Mazzinghi, *Sanctuaries*, pp. 48-50 being extracts from the *Rotuli Parliamentorum* quoted at length and translated.

lessened the abuse of sanctuary privilege at Westminster. Debtors of all sorts were still able, however, to find refuge there on the plea of misfortune and distress. That such sanctuary privileges as those possessed by Westminster were not to be tolerated elsewhere, is proved in a case in the year 1393-94 when complaint was made to Parliament that the abbots of Colchester and Abingdon usurped the same privilege of sanctuary as that in use at Westminster, affording protection "for all manner of men coming and flying within the precincts, for debt, detenue, trespass, and other personal actions, so far that they suffer no bailiff, coroner, or other minister of the king to perform their duties in execution of the law therein." As a result of this complaint the two abbots were ordered to appear and show warrant for claiming such privileges,[22] but what the outcome was we do not know. In the year 1404, very serious complaints were preferred by the House of Commons against sanctuary afforded by the collegiate church of St. Martin's le Grand in London. Fraudulent persons, it was claimed, resorted thither in order to cheat employers and creditors; forgers and others received protection, and the place had become a nest of bandits beyond the reach of the law. For these reasons the Commons prayed redress, but for the time at least little redress was afforded, though other complaints of a like nature show the need for it.[23]

Besides the above there are many other flagrant cases of the abuse of the privileges of the chartered sanctuaries to be found in the Parliament records. Especially was this the case during the reigns of Henry VI. and Edward IV., when lawlessness and disorder seem to have been rampant in England, due no doubt to the constant wars of the Roses. On

[22] *Rot. Parl.*, III, 320, 17 Rich. II.

[23] *Rot. Parl.*, vol. III, 503 b.

the other hand, the chartered sanctuaries often protected innocent persons from the vengeance of their enemies and the Abbey of Beaulieu is especially noted for the shelter it afforded to several adherents of the Lancastrian cause after the disastrous day of Barnet.[24] Westminster was also a favorite royal sanctuary, having been twice resorted to by the Queen of Edward IV., her son, Edward V., in fact, being born there in 1471.[25]

At the time of the general regulation and limitation of sanctuary privileges in the reign of Henry VIII., the great chartered sanctuaries suffered the most. There was complaint made in 1534 to the Secretary Cromwell that the administration of royal justice was embarrassed, and the King's revenues consequently diminished, by the large numbers of liberties and sanctuaries in the northern counties. The writer referred to says: "There are two great sanctuaries in Yorksire beside the bishopric of Durham, where all murderers and felons resort, and have at least one hundred miles compass." In conclusion he advised that only Durham should be left as a sanctuary.[26] So convinced was Cromwell himself of the need of reform that in 1536 he made a memorandum, "specially to speak of the utter destruction of sanctuaries," before the Parliament of that year.[27] To destroy them utterly was not possible at the time, and even after the statutes of 1540 many of the collegiate churches, cathedrals, and hospitals, which had formerly enjoyed sanctuary privileges by charter, continued for almost a century to grant limited immunity by authority of the crown, though many others, as Beverley,

[24] *Rot. Parl.*, III, 630; Mazzinghi, pp. 45, 51.

[25] Mazzinghi, *Sanctuaries*, p. 64.

[26] *Calendar of Letters and Papers*, Henry VIII., R. S., ed. Brewer, VII, no. 1669; Lapsley, *County Palatine of Durham*, p. 255.

[27] *Calendar of Letters*, etc., vol. X, no. 254.

Hexham, Beaulieu and so on, had gone out of existence.[28]

The words of an eminent English churchman of to-day, in speaking of the sanctuary afforded by Westminster, are applicable to the class of chartered sanctuaries in general: "The sanctuaries of mediaeval Christendom may have been necessary remedies for a barbarous state of society, but when the barbarism, of which they form a part, disappeared, they became almost unmixed evils; and the national school and the Westminster hospital which have succeeded to the site of the Westminster sanctuary, may not unfairly be regarded as humble indications of the dawn of better days."[29]

[28] *Ante*, pp. 47, 48. Westminster seems to have continued to afford sanctuary, see Mazzinghi, *Sanctuaries*, p. 70.

[29] Stanley, *Memorials of Westminster*, p. 414.

## CHAPTER IV

### THE SANCTUARY-SEEKERS OF MEDIÆVAL ENGLAND

It is exceedingly interesting to note who those persons were who sought the protection of the great English sanctuaries. This we are enabled to do through the publication of certain of the sanctuary registers, such as those of Durham and Beverley, and through other sources of information which bear on the question of sanctuary in the Middle Ages.[1] These sources furnish first-hand information concerning the class of people who were sanctuary-seekers, the crimes they were guilty of, and their life within sanctuary walls.

The sanctuary register of the cathedral church at Durham is one of the most important sources of information as to the sanctuary-seekers of the fifteenth and early sixteenth centuries. Its records extend from June 18, 1464, to September 16, 1524, the sanctuary entries having been made in chronological order in the cathedral register, from which they have been gathered in one volume and published by the Surtees Society. During this half-century, two hundred and seventy-eight persons are recorded as having taken sanctuary at Durham, or an average of five or six a year. But as there are no entries for a considerable number of years, it is safe to assume, not that those years were blank, but that the entries were made elsewhere or not made at all. In all probability

[1] *Sanctuarium Dunelmense et Beverlacense*, Surtees Society, 1835, ed. James Raine contains two important registers, one for Durham the other for Beverley; *Select Cases from Coroners' Rolls*, Selden Society, ed. C. Gross, contains several interesting sanctuary cases. The chroniclers of the middle ages, published in the Rolls Series, also contain much valuable information.

there were many unrecorded cases of sanctuary-seeking for the number of entries in the register varies greatly from one to two in some years, up to eighteen and twenty in others. The largest number of entries for any one year is twenty-two.[2]

Many interesting and curious stories could be gleaned from these entries, but one or two instances must suffice here. Under the date July, 1497, a somewhat affecting entry occurs. A certain Christopher Brown appears at the church, seeking sanctuary, and makes confession before a notary and witnesses of having been the unwitting cause of the death of the three-year-old son of one Thomas Carter. Carter, it appears by this confession, was riding with his son before him on the saddle when Brown met and insulted him. In Carter's haste to alight and avenge the insult the little boy fell to the ground and was trampled to death by the hoofs of the restive horse. Brown recognizes himself as guilty of the child's death and prays for church privilege and immunity. Amongst the witnesses to the confession and registration the name of the master of the Abbey school at Durham is prominent.[3]

Almost without exception the entries in the register are in Latin, and in connection with a defaulting steward it is refreshing to find good downright English used; when on the twenty-ninth day of August, 1519, there came to the cathedral church a certain Robert Tenant who prayed immunity as follows:

"I aske gryth for Godsake and Saint Cuthberts, for savegard of my life and for savegard of my body from imprisonment concerning such danger as I am in enenst my lord of Northumberland for declaracion of accompts for which myn answer was to Master Palmys . . . and other more of my lord's servants that were sent to Ripon to examine me in the presence of Master Newman, president of the Chapter of

[2] *Sanct. Dun. et. Bev.*, the year, 1505, is the year in question.

[3] *Sanct. Dunelm.*, etc., p. 2, no. iv.

Ripon, and that it would please my lord's good lordship to let me have as manie of such books of myn delivered to me as belonged to my charge, so that I might have them and make them up there, which I would do in as convenient haste as I could possible, and that done declare accompts within that said sanctuary, and if it were found I were in any manner of debt to my lord upon the determination of my accompt, I should either content the same, or els, if I would find no securitie, I would submit me to my lord, to which Mr. Survier demanded of me what time and space I desired to have for the perfecting of my books, and I answered that I could set no day, but as soon as I possible might, for the which cause I aske gryth for God Sake and St. Cuthberts, in the presence of Maister Cuthbert Conyers, Sir Thomas Dawson, and John Clerk and many others." *26th August, 1519, Per me, Rob. Tenant.*[4]

In another case, occurring the same year, Thomas Ley, a chaplain, employed to collect the rents of his master, the Earl of Derby, tells how having gathered the sum of fifty-eight pounds he loses it on his way to his lord and fearing to be imprisoned flees to sanctuary. He confesses, however, that he has brought with him £13. 6s. 8d. belonging to the Earl.[5] Both this case and the former one are interesting as examples of one side of sanctuary privilege—that of protection afforded to unfortunates in distress through debt or inability to account for money belonging to their masters. In such cases the persons involved might not be dishonest, but only careless or negligent, and to throw them into a debtor's prison would have been an excessive and cruel punishment.

We find that in the case of some sanctuary-seekers the church authorities would issue a letter of testimonial and belief, if requested to do so. Such a letter was in the nature of a declaration, whereby the church authorities declared that

[4] *Sanct. Dunelm.*, etc., p. 86. Tenant appears to have first taken sanc tuary at Ripon, and then, later, fled to Beverley.

[5] *Sanct. Dunelm.*, etc., p. 84.

some particular man or men had taken sanctuary and confessed his or their crime. One example of such a letter is contained in the Durham register. It is in English and is addressed to all Christian people, being a declaration by John, prior of the Cathedral Church at Durham, that one Robert Atkinson has taken sanctuary confessing the murder of William Skoloke of Crosby, for which three other members of the Atkinson family have been arrested and "in dorance holdyn and for felony greatly troublytt." Wherefore the prior puts forth this declaration "for somuch as it is meritory and medeful to testify to the truth in avoydyng of all such inconvences as may fall her uppon;" and he sends out a copy of the immunity and "grith" as it was taken and registered.[6]

In some cases as many as three, four, or five sanctuary-seekers would arrive in a group, fellow-comrades in crime or evildoing. In one or two instances only do we find the same individual or individuals taking sanctuary a second time, but cases of men taking sanctuary for crimes committed long before are not at all infrequent. In one case sanctuary is sought by a murderer twenty-six years after the deed had been done, while in another instance twelve years had elapsed, and in yet a third two murderers who had escaped arrest for eight or nine years are at last forced to seek sanctuary, in 1486, with their goods and chattels, in order to escape punishment and forfeiture.[7] A somewhat curious case is furnished by a man who takes sanctuary for the alleged theft of an ox, seventeen years previously. He denies the imputation but deems it wisest to seek protection in the church.

Out of the two hundred and forty-three crimes and misdemeanours recorded in the Durham register, one hundred

[6] *Sanct. Dunelm.*, etc., no. xlviii, p. 21.

[7] *Sanct. Dunelm.*, etc., nos. cxiii, clvii, pp. 46, 61. See for several additional cases of lapses of time Réville, Revue Historique, Sept., '92, pp. 24-25.

and ninety-five, or considerably more than three-quarters, are cases of murder or homicide. Of the less serious causes for taking refuge there are sixteen cases of debt, nine of cattle-stealing, seven of theft; four each of horse-stealing, house-breaking, and escaping from prison, and one each of rape, petty larceny, thief-harboring, and failing to prosecute.[8] The occupation or rank of the fugitive is only given in the Durham register in the case of forty-five of the petitioners, but the instrument of violence is given in two hundred instances. Every variety of weapon of the day, almost, is mentioned, from a crab-tree staff to a wood axe, and anyone interested in mediaeval weapons of offense would do well to consult the Durham sanctuary register. The favorite weapons seem to have been daggers and swords, of all and every kind; then clubs, staves, lances, bills, and axes. Men were slain any way in the heat of a quarrel, but a stab from a sword or dagger, or a knock on the head with a club, a bill, or an axe, occur most frequently.[9]

The sanctuary register which belonged to the Church of St. John of Beverley, supplements to a certain extent that of Durham.[10] The period covered by the entries is, roughly, from 1478 to 1539, though as in the case of Durham there are no entries for many of the years between these dates. Nevertheless, close on five hundred persons are recorded as having taken sanctuary there during these sixty years. As regards the nature of the entries, they are much longer than those in the Durham register and in over three fourths of the cases the trade or occupation of the fugitive is stated and in nine

[8] *Sanct. Dunelm.*, etc., Pref., p. xxv. The entries are there summarized, but not altogether accurately.

[9] *Sanct. Dunelm.*, etc., Pref., p. xxv, where a list of the various weapons is given.

[10] The two are published together, see *Sanctuarium Dunelmense et Beverlacense*, Surtees Society, 1835.

tenths the nature of the crime is given.[11] In these respects, therefore, the register is especially valuable. Crimes of violence recorded in the Beverley register aggregate only two hundred, while there are two hundred and eight cases of debt and fifty or sixty of minor crimes. Of the doers of violence, the tailors appear most numerous as a class. Either the tailors of this time were bold and violent men or they were particularly liable to provocation or assault, for in only one of these ways can we account for the frequent recurrence of members of that trade in the sanctuary register. Certainly in proportion to their number in the community they seem to have supplied more sanctuary-seekers, to Beverley at least, than any other class, and we find many examples of their bloodthirsty deeds. In general, however, the sanctuary-seeker was a yeoman, a husbandman, or a farmer. As the laboring and agricultural classes formed the greater part of the population of England at this time, it is only natural that they should supply the largest number of sanctuary-seekers. Of the debtors who took sanctuary at Beverley, the butchers are most numerous, and their lead in this respect gives them the first place, also, as a class, amongst the offenders in general. All trades and occupations, however, supplied their quota of criminals, and it is somewhat difficult in general to place one class before another in point of criminality, though the tailors and the butchers seem to deserve the first place in regard to deeds of violence and cases of debt, respectively. The great mass of sanctuary-seekers belonged

[11] The following is a typical Beverley entry:

*John King, carpenter.*

"Johannes Kyng, nuper de Stanfeld in Comitatu Lincoln, carpenter, viij die Aprilis, anno xix Edwardi iiij, venit hic et petit libertatem homicidis concessam, pro eo quod idem Johannes, apud Stanfeld predictam, die Dominica in media quadrigesima interfecit Rogerum Yerburghe de eadem, laborer; et accepto ab ipso sacramento, secundum consuetudinem, admittus est ad libertatem predictam." *Sanctuarium Dun. et Beverlacense*, p. 161.

to the middle and lower classes of society, and it is only occasionally that a gentleman or nobleman is found resorting to sanctuary for any offense save one of a political nature. Ecclesiastics are several times met with as taking sanctuary, and women occasionally.

There are several very interesting cases amongst the Beverley entries, though the exceedingly meager details balk the curiosity of the student. In one instance a certain Robert Beawmont, a learned man (*litteratus*), and Elizabeth Beawmont, gentlewoman, the former of Almabury in Yorkshire and the latter from Heton in the same county, seek sanctuary at Beverley on September 25, 1479, for the death of Thomas Aldirlay, of Almabury aforesaid, some months previously. How they slew him, whether by poison or violence, we do not know. They take the sanctuary oath according to custom and are admitted.[12] We cannot but wonder what were the particulars of the crime which brought this scholar with his kinswoman, both doubtless belonging to the noble northern family of Beaumont, into the sanctuary of St. John at Beverley—but history is silent. In any case, however, this is an important entry as it is the first instance we have of a woman being admitted to the sanctuary of Beverley and is in fact the only case of the sort in the register.

Another interesting Beverley entry is that which occurs under date of July 19, 1529, when Richard Dawson of Pontefract, minstrel, from the County of York, seeks the liberty and protection of St. John of Beverley for the murder and death of Brian Routch, lately of Skipton, a minstrel also.[13] The border minstrels were, no doubt, often a quarrelsome lot, and this is by no means the only example history affords of one bard slaying another.

[12] *Sanct. Dun. et Bev.*, p. 162, no. ccxxxi.

[13] *Sanct. Dun. et. Bev.*, p. 183, 19 Henry VIII.

It is worth while observing that at Beverley, and at Durham also to a less degree, the sanctuary-seekers came from all parts of England. This is easily understood when we realize that at that time the law was not all-reaching or all-pervading in England, and that the farther a man could remove himself from the scene of his crime the safer he would feel from its consequences. Thus it is that Londoners and men from the Midland districts are frequently found entered in the Beverley and Durham sanctuary registers and that Yorkshiremen are found fleeing to Durham in some cases, and inhabitants of the Palatinate seeking shelter at Beverley in others.

The Coroners' Rolls afford a number of typical cases of sanctuary-seeking, some of which have already been noticed.[14] The persons referred to in such official records are those dealt within a judicial manner by the legal machinery of the day. The ones who sought refuge in the chartered sanctuaries came under special rules and immunities. In the year 1332 we hear of two promising recruits for the king's army setting upon and mortally wounding the constable, John of Cold Ashby, as the result of a quarrel, and then the two culprits take refuge in the church at Ashby, but "forthwith the recruits of Northampton who were on their way to the king came and took them *vi et armis*—by force of arms—from the church, to make them serve the king. The said John, son of Simon Robert, lived during the two following days and then died of his wounds."[15] The king was not going to lose two soldiers just because they had happened to slay a constable in a quarrel. That the practice of using sanctuary men for

[14] *Ante*, pp. 40-41.

[15] *Select Cases from Coroners' Rolls*, Selden Society, pp. 74-75, County of Northampton.

soldiers was not unknown and was sanctioned by the law is easily proved.[16]

We have already had one or two examples of women sanctuary-seekers, but such cases are somewhat exceptional. Women were more frequently the victims than the perpetrators of crime, and nearly all persons who sought sanctuary were men. On this account the cases in which women appear as sanctuary-seekers are especially interesting. For example, in the year 1225, we have the following singular case: A woman who wished to be separated from her husband, probably for good reasons of her own, accused herself of an imaginary felony, took sanctuary and then abjured the realm.[17] It was a mediaeval method of divorce. Other instances of women taking sanctuary, and sometimes abjuring as well, can be found here and there in the records, but in proportion to the number of male sanctuary-seekers they are few and far between.[18]

The total number of sanctuary-seekers in England must have been very large if we are to judge from the number found resorting to sanctuaries like Beverly and Durham, typical of one class, and the number found in the Coroners' Rolls and assize rolls of counties. For a single county, that of Stafford, the number of persons resorting to ordinary churches for sanctuary in the year 1272-73 was twenty.[19]

When we multiply this by the number of counties in England and add to the result the number of those who fled each year to the thirty odd chartered sanctuaries, or took refuge in

[16] Act of 22 Henry VIII., cap. xiv, *Statutes*, III, 332; Lapsley, *County Palatine of Durham*, p. 255, note 1; Mazzinghi, *Sanctuaries*, p. 104.

[17] Cited by Réville, Revue Historique (Sept., 1892), p. 26.

[18] *Select Cases from Coroners' Rolls*, I, 38, under date 1279, has the case of a woman who killed her husband, then took sanctuary and abjured. Mazzinghi, pp. 38, 39-40, gives several instances of women taking sanctuary in the year 1272-73 in various churches in Stafford.

[19] Mazzinghi, cap. iv, pp. 35-42, has a record of these cases in Stafford.

other privileged places, the total number of sanctuary-seekers must be considered large. At the lowest computation we cannot place the number each year much below a thousand persons. This is not an exaggerated computation by any means, and it serves to show the prevalence of sanctuary-seeking. Everywhere throughout the realm were little groups of criminals gathered together, but especially were they to be found with the walls of the chartered sanctuaries.

Not a great deal is known as to life within sanctuary limits, but what little we do know leads us to conceive no pleasant picture of what such life must have been. An Elizabethan poet, Michael Drayton, in his *Wars of the Barons*, has given us a stanza which probably does not fall short of the truth. He writes:

> "Some few themselves in sanctuaries hide
> In mercy of that privileged place,
> Yet are their bodies so unsanctifide,
> As scarce their souls can ever hope for grace,
> Whereas they still in want and fear abide,
> A poore dead life this draweth out a space,
> Hate stands without and horror sits within,
> Prolonging shame but pardoning not their sinne."

This, however, presents the darkest side of sanctuary, for, as we have seen, fugitives were excellently received and treated at some places, such as Durham, Beverly, and other great sanctuary centers in England.

In general, after the various formalities as to entrance had been gone through with, the fugitive became one of a little group of men, with sometimes a few women amongst them, gathered together for protection within sanctuary limits. They formed a community absolutely apart from the rest of the world, living a life of their own. The number of inmates at any given sanctuary might vary from time to time. It depended on the accommodation afforded by the place,

and then again some sanctuaries were more popular than others and attracted more fugitives by reason of the advantages they offered in the way of treatment and the greater security they afforded from the law or from outside vengeance. In most cases the number of inmates rarely exceeded twenty, and, in fact, that would be a large number. However favorable the treatment accorded to fugitives, the life of those within sanctuary limits must have been undesirable. It was frequently made more so by the evil and wicked conduct of some of the fugitives. We hear of sanctuary men banding themselves together and sallying out into town and country plundering and terrifying the inhabitants. Then when the hue and cry was raised they would go back to their refuge. Such proceedings were contrary to the sanctuary rules and regulations, but such infraction does not seem to have cost the offenders their sanctuary protection. In London, in the fourteenth and fifteenth centuries, loud complaints were made concerning the conduct of the sanctuary men at Westminster and at St. Martin's le Grand, who would issue forth to commit depredations and do other mischiefs.[20]

Fortunately for the general peace, residence in sanctuary, throughout the greater part of our period, was, in most cases, strictly limited both by the law of the land and by the rules and regulations of the great sanctuaries. So by abjuration or by flight, sometimes merely from one sanctuary to another, England was each year rid of many sanctuary-seekers, and a settled nest of criminals was rendered impossible, until Henry VIII., in 1540, set aside his seven sanctuary towns and segregated rogues and rascals in them. The discontent aroused by this act, however, will be dealt with later; so in the next chapter we shall pass on to the important topic of violation of sanctuary.

[20] *Rotuli Parliamentorum*, vol. II, 369; III, 276, 320; IV, 503 b; V, 247. Mazzinghi, chap. iv, pp. 35-55, has many interesting cases of sanctuary-seeking and sanctuary-abuse.

## CHAPTER V

### VIOLATION OF SANCTUARY PROTECTION

The fugitives who fled to sanctuaries for protection were not always sure of absolute safety within sacred precincts. Numerous cases of violation of sanctuary attest this, especially in connection with important offenders. Even in regard to less important sanctuary-seekers, violation of sanctuary took place now and again, though on the whole the general right of criminals to the protection of the Church was recognized and respected by the law and by the people at large. But in regard to high and petit treason, or great political offenders, those guilty could not expect to escape punishment by a resort to sanctuary. The Church, indeed, always regarded violation of sanctuary as a heinous crime provoking divine vengeance on the perpetrators. In default of this vengeance they would call on the secular arm to punish the guilty and to see that the privileges and immunities of the Church were respected. In addition, excommunication was to be pronounced against all violators of sanctuary, and the scathing denunciations against such by the Council of Lambeth, in 1261, is but one of many like decrees in English ecclesiastical records and Legatine constitutions.

We have already seen how in Anglo-Saxon times the breaking of church frith entailed a heavy fine, or even worse punishment, on the offender, and that, therefore, violations of sanctuary were exceedingly uncommon. In the more turbulent times succeeding the Norman conquest, however, several interesting cases of sanctuary-violation are met with. One of the very earliest of such instances is to be found in the

pages of the chroniclers of the time and relates to a quarrel or feud amongst the advisers and officers of Bishop Walcher of Durham in the year 1080. We hear first of rivalry and ill-feeling between Liulf, one of the Bishop's chief advisers, and Leobwine, one of the episcopal officers. The Bishop's nephew Gilbert, is also mixed up in the quarrel on the side of Leobwine. A taunt, directed at Liulf at a council meeting, accentuates the quarrel and soon afterwards Liulf is slain by his enemies. As the Bishop is suspected by many, and perhaps not unjustly, of being concerned in the matter, he undertakes to clear himself by oath of all complicity in the matter, and a *gemot*, or assembly, is called at Gateshead. But the attitude of those who supported Liulf appears so threatening that Bishop Walcher is forced for his own safety to take refuge, with a few of his followers and chief councillors, in a near-by church. This but postpones their fate, however, for in a later tumult the bishop and his supporters are attacked, and the prelate with his nephew, Gilbert, fall victims to the vengeance of the friends of Liulf. Leobwine, the chief object of animosity, makes good his escape and takes sanctuary in the church of Durham. But sacred protection does not avail him; fire is employed to drive him from his last refuge, and the unhappy man rushes forth to perish on the spears of his adversaries. The murder of Liulf is thus triply avenged.[1]

In such a state of society as this it is not remarkable that sanctuary protection, which was needed, was not always respected. From contemporary accounts we must adjudge the capital of the palatinate of the north, Durham, to have been one of the most lawless places in all England. About twenty years after the murder of Bishop Walcher, we learn

[1] For an account of this case see William of Malmesbury, *De Gestis Pontificum*, R. S., p. 271; Florence of Worcester, I, 14-15; Simeon of Durham, I, 116-117; II, 208-210; *Anglo-Saxon Chronicle*, I, 351; and Lapsley, *County Palatine of Durham*, pp. 107, 109.

that his successor, Bishop Turgot, did not hesitate to drag fugitives from their refuge in the church and wreak his vengeance on them, although, it is said, such a proceeding was previously unheard of in Durham.[2]

But the respect for sanctuaries doubtless increased with the growing power of the church in England. Even in Durham, in the first half of the twelfth century, we find a notorious case of sanctuary-violation arousing great indignation and outcry amongst the populace. The pious chronicler, Reginald, relates the story of how a certain youth, in the service of Bishop Geoffrey, was slain in a quarrel and the murderer at once took sanctuary in Durham minster. The friends of the murdered youth surrounded the church to prevent the escape of their prey within, and when every other means had failed, six of them entered the sanctuary, while the monks were at supper, and while four stood on guard the other two proceeded to the shrine. There they found their victim on his knees before the altar and mercilessly attacked him, inflicted eleven ghastly wounds, and left him for dead. The news of this sacrilege raised a tumult in the town and a great multitude assembled, indignant that such an outrage should have been perpetrated in their midst. The bishop had to reconsecrate the church the day following and to pardon the victim, who survived his wounds and recovered. The hue and cry was raised after the murderers and sometime later one of them was captured in a village a few miles from Durham. He was immediately loaded with chains and thrown into prison to await torture and "a horrible kind of death."[3]

[2] Wm. of Malmesbury, *De Gestis Pontificum*, p. 273: "Si quando ad ecclesiam Sancti confugerit, abstrahere non dubitant ausus scelus omnibus retro annis inauditum."

[3] Reginaldi Monachi Dunelm., *Libellus*, Surtees Society, 1835, caps. lx. and lxi, pp. 119-122.

Sometimes, to the pious chronicler, the hand of God was clearly apparent in the punishment inflicted on violaters of churches. Thus Reginald of Durham tells us of the punishment which followed on the violation of a church and churchyard at Arden forest, on the border of Nottinghamshire. The exact date of the occurrence is uncertain, but falls within the reign of Stephen, probably during the early part of that king's rule. The church at Arden forest was dedicated to Saint Cuthbert, and during the eight days' celebration of the feast of that saint, in March, the countryside is ravaged and devastated by a band of lawless and violent men who slay and rob all whom they meet. The village surrounding the church being finally attacked, the terrified villagers seek sanctuary with their property in the church or churchyard, or fly to the woods and caves. But in spite of the vigorous remonstrances of the priest, the robbers boldly break open the doors of the church and violate the sanctuary. The people are plundered and maltreated, and, laden with spoil, the robbers retreat to a marshy island in the neighboring fen. There they have a royal feast, but being alarmed after their revels by the approach of the courageous parish priest, with his servants and some of the villagers, they attack each other in drunken frenzy. Finally, overcome by fear and terror, they attempt to escape from the island. A few swim to land, others are drowned or are slain, while some are captured by the villagers. The plunder is all recovered and much property restored to the original owners, while the rest is gathered into the churchyard by the priest. The chronicler, like a true mediaevalist, ascribes the discomfiture of the robbers to God and St. Cuthbert.[4]

The records of the Plantagenet period supply many notable cases of violation of sanctuary and the history of a few

[4] Reginald. Mon. Dun., cap. lxv, pp. 130-34; Mazzinghi, pp. 73-74.

of these will serve to illustrate how the privilege of sanctuary was regarded by the State. It is not necessary to dwell on one of the earliest of such cases, that of the death of Thomas A'Becket, Archbishop of Canterbury. After seeking in vain to carry the stubborn prelate from the precincts of his cathedral, the four knights slew him by his own altar screen and thereby violated the sacred precincts of the sanctuary. Extreme advocates of the sanctuary privileges of the church have put forward, at one time or another, the claim that it was partly in defense and vindication of this right of protection that Becket became a martyr. This contention is hardly justified by the facts of the case, as all must admit.

In the year 1191 a more typical case of sanctuary-seeking is found. Geoffrey, Archbishop of York, had quarreled with his half-brother, the king, and with Richard's representative and chancellor, William Longchamp, Bishop of Ely.[5] In fear of his life and person, Geoffrey took refuge in St. Martin's Priory at Dover, one of the great English sanctuaries. He arrayed himself in his full archiepiscopal robes, but by order of Longchamp was forcibly removed five days later and imprisoned at Dover. In excuse for the extreme measures taken by the Bishop of Ely it was said that St. Martin's Priory was under control of the bishop, who in addition was papal legate and so possessed of power sufficient to warrant such violation of privilege.

Another startling instance which showed to what extremes the state would go when the capture of an important

[5] The trouble arose through Geoffrey's returning to England to claim the Archbishopric of York after being consecrated, in virtue of a papal mandate, by the Archbishop of Tours. On arriving in England he was required to take the oath of allegiance to Richard or depart from the kingdom, but eluding the officers set to watch him he took sanctuary; fearing no doubt that violence might be intended to him by his enemy, Longchamp the regent. See Roger de Hoveden, R. S., II, 138, 140, 144. Mazzinghi, *Sanctuaries*, p. 75.

criminal was necessary, is furnished in the case of William Fitzosbert, or Longbeard, as he was called, in the year 1196. This man was a popular demagogue of the day, the leader of the democratic party in London. He belonged to a well-known civic family, had been a Crusader, but having become penniless was thrown on his own resources. After heading a dangerous revolt in the city he was convicted and condemned to death, but after slaying one of his guards he managed to escape to the church of St. Mary-le-Bow. This church belonged to the Archbishop of Canterbury, Hubert Walter, who was then the chief justiciar, and orders were given by him to drag Longbeard out by force. The fugitive had, however, taken refuge in the lofty tower of the church but the resolute archbishop commanded to set fire to the tower. This was done and the smoke and flames forced Longbeard to descend and surrender.[6] At the hands of the law he suffered a traitor's doom, being dragged naked through the streets of the city, tied to a horse's tail, over rough and flinty roads to Tyburn. There he suffered a living death, by being cut open and disemboweled, before he was finally hanged "on the fatal elm."

The violation of the church of St. Mary-le-Bow in such an audacious manner greatly angered the Canterbury clergy, and a little later when Hubert Walter was forced to resign the justiciarship, in 1198, one of the chief articles of complaint to the Pope, alleged against Hubert by the canons, was this very case of sanctuary violation.[7] The Pope does not seem to have censured Archbishop Walter in the matter,

[6] Roger de Hoveden, *Chronica*, R. S., vol. IV, 6, 48: "Qui cum inde exire nollent, factus est insultus in eos: et cum nec sic reddere se vellent, ex praecepto archiepiscopi Cantuariensis, regis justitiarii, appositus est ignis, ut per fumum et vaporem ignis exirent."

[7] Roger de Hoveden, IV, 48: "Quod ex precepto illius violata fuit pax ecclesiae Sanctae Mariae" etc.

however, and in palliation of his offense was the fact that the church of St. Mary-le-Bow was the archbishop's own peculiar, and that Longbeard was probably regarded as a heretic. It was rather the fact that Hubert Walter had led an army against the Welsh that caused the pontiff to judge the secular office of justiciar to be incompatible with the ecclesiastical dignity and functions of the archbishop. In any case Hubert was forced to resign the justiciarship.

Early in the reign of Henry III. a very flagrant case of sanctuary violation took place. The king's chief councillor and adviser, Hubert de Burgh, having fallen under the royal displeasure, in 1232, was in danger of imprisonment, or worse, and fled for refuge to Merton Priory, in Surrey. The king commanded the Mayor of London to seize him there, but on Hubert taking refuge at the high altar, the sanctuary was respected. Having ventured from the shelter of Merton, the unfortunate adviser was again in danger and again took sanctuary, this time in a small chapel at Brentwood in Essex. From thence, however, he was ruthlessly torn by order of the king, although at the time he had taken refuge at the altar and was grasping the cross in one hand and the host in the other. His feet were tied beneath his horse's belly and he was brought back to London in ignominious captivity and thrown into the Tower. Such an open violation of the church's liberties and privileges alarmed the English clergy greatly, and the Bishop of London threatened to excommunicate the guilty persons. Under these circumstances the king ordered de Burgh to be restored to the chapel. But this was a mere concession to religious sentiment, for the sheriffs of Herts and Essex so straitly guarded the fugitive that he was finally forced to surrender through starvation and the hopelessness of escaping. Again he was carried to London and thrown into the Tower, and later, having escaped a capital sentence, was sent to the castle of Devizes as a prisoner of state. After arriving there he man-

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aged to escape from his gaolers and took refuge in a church in the diocese of Sarum. Once again he was dragged from the altar, grasping the cross, and taken back to the castle. Once again the ire of the Church was aroused, and the Bishop of Sarum proceeded to the castle and demanded the restoration of the sanctuary-seeker to the Church, and protested against the violation in strong terms. His demands were refused, his protestations were unheeded, and he forthwith excommunicated all within the castle who had been concerned in the matter. In addition a complaint was preferred to the king and, backed by the Bishop of London and other prelates of the day, it was sufficient to cause orders to be given to restore the person of Hubert de Burgh to sanctuary. Again, therefore, had the Church vindicated its privilege of sanctuary, but as in the former case, the victory was a hollow one, for the sheriff of Wilts was ordered to see to it that the fugitive did not escape or receive food or nourishment. Had it not been for the opportune arrival on the morrow of a band of armed friends of de Burgh, whose mission it was to free him, there is little doubt that he would have had to surrender once again. As it was he escaped into Wales and was safe, being later reconciled to the king.[8] Under a king less open to ecclesiastical influence than Henry III. it is doubtful if these two successive restorations to sanctuary would have taken place. As it is they prove how powerful the Church was in the thirteenth century and how strongly the clergy were inclined to uphold the right of sanctuary.

In 1239 a notable instance of the power of the Church to protect inmates of sacred edifices occurred in connection with the abbey of Waverley, in Surrey. A shoemaker, who was employed in the abbey, was seized and arrested as a

[8] Matthew Paris, *Chronica Majora*, R. S., vol. III, pp. 222-227, 230-32, 252-53.

homicide, within abbey limits, by the officers of the law. This the abbot and convent decided was a violation of sanctuary privileges and they appealed to the papal legate, Otho, for ecclesiastical intervention. This appeal not producing any result the abbot then called on the king and council to redress the grievance complained of. Although the council was at first opposed to the suit of the abbot, yet after considerable litigation and trouble they were persuaded to adjudge the matter in favor of the right of sanctuary possessed by the abbey of Waverley. The whole of the conventual buildings and enclosures were declared safe from violent entry or seizure of those dwelling there. The shoemaker was brought back, and those who had committed the violation were first excommunicated, then scourged, and then absolved and pardoned, after they had made satisfaction to the abbey for damages sustained through their act.[9] This was certainly an important assertion of the Church's right of protection, and the full and free recognition by the king's council of the privileges possessed by the abbey must have placed the privilege of sanctuary on a firmer basis.

On account of the numerous cases of violation of sanctuary and of interference with the privileges of the Church in regard to the protection of criminals, there are several cases of complaint by the prelates to King Henry III. The clergy were active and energetic in defense of sanctuary privilege and bitterly resented any violation of it. In the year 1300 the Dean and Chapter of the church of St. Mary at Stafford sent in a petition to the king against persons who had forcibly seized and removed sanctuary-seekers from their church. The result of the petition or details of the alleged violation are not given,[10] but we may suppose that all pos-

[9] *Annales Monastici* (Waverley), R. S., vol. II, p. 327.

[10] Mazzinghi, *Sanctuaries*, p. 79; *Reports of Deputy Keeper of Records*, no. VI, ii, App. p. 97.

sible redress was granted by the king. The first two Edwards both made regulations concerning sanctuary privilege, as we have seen, and the institution became more firmly established than ever.[11]

During the troubles which marked the opening years of Edward III.'s reign, there were many cases of sanctuary violation of a general nature, especially in connection with the risings in the monastic towns. At Abingdon, in particular, the insurgent townsmen invaded the precincts of the abbey church, wounded one of the monks, and dragged the others away to be thrown into prison.[12] With the restoration of peace and order in England such lawlessness and violence almost disappeared, and few cases of sanctuary violence are to be found during the remainder of the third Edward's reign.

In 1378, however, soon after Richard II. had come to the throne, a very important case of sanctuary violation occupied the attention of Parliament. Simon Sudbury, the Archbishop of Canterbury, with other prelates, complained in a petition to the king and Parliament "that a certain Robert Haulay, Esq., and another person, servant of the church, had been set upon and killed in the church itself (the abbey church at Westminster), by a great number of armed men, at the very hour when High Mass was being celebrated at the High Altar."[13] Such a sacrilege as this it was claimed concerned not only the privileges of the Abbot of Westminster, the Archbishop, the metropolitan, and the Bishop of London in whose diocese the abbey lay, but the English Church, the Pope, as head of monastic houses, and the church and clergy at large, wherefore they prayed for relief and redress. We have already seen that

[11] *Ante*, p. 26.

[12] *Brit. Mus. Ms.*, 28666, f. 156; *Cal. Pat. Rolls*, 1327-30, p. 288.

[13] *Rot. Parl.*, vol. III, p. 37; Mazzinghi, *Sanctuaries*, pp. 46-47; Walsingham, *Historia Anglicana*, R. S., I, 376-78, gives an account of this occurrence.

this expostulation resulted in a counter attack from the temporal lords and that the privileges of Westminster were abridged in consequence, though not very greatly.[14] The murderers of Haulay, however, received a well-merited punishment. They were excommunicated and had to pay a large fine to the abbey authorities. The church itself was closed for several months, on account of the sacrilege, and had to be reconsecrated.[15]

During the fifteenth century cases of sanctuary violation are very frequently to be met with. Many of the unfortunate followers of Wycliffe, belonging to the sect of Lollards, were torn from sanctuaries, as being heretics, and condemned to be burnt. In 1427 we hear of the Abbott of Beaulieu being called on to produce proof of his liberties and franchises, if he had any, whereby he was entitled to protect one William Wawe, "a heretic, traitor, common highwayman, and public robber." Wawe was arrested, and we learn his fate from Stowe who writes briefly in his Annals, "Willie Wawe was hanged."[16]

The kings of that period had little or no respect for sanctuaries when these sheltered political enemies. In 1454 the Duke of Exeter, who had been associated with some troubles in the north, was removed by force from the abbey of Westminster in spite of the protestations and opposition of the abbot and convent.[17] Edward the Fourth seems to have had even less respect for sanctuary privilege in the case of political offenders. After the battle of Tewkesbury, in 1471, he caused the Duke of Somerset and twenty other Lancastrian leaders and nobles to be dragged from sanctuary

[14] See, *Ante*, pp. 55-58, for a discussion of this case of a great chartered sanctuary's privileges.

[15] Walsingham, *Historia Anglicana*, pp. 376-78.

[16] *Proceedings and Ordinances of the Privy Council*, ed. H. Nicolas, Record Comm., vol. III, p. 14; Mazzinghi, *Sanctuaries*, p. 50, quotes Stowe.

[17] *Proceedings Privy Council*, vol. IV., p. 56.

in a nearby church and beheaded.[18] This was but one of his many acts of sacrilege. Even his successor, Richard III., did not venture to invade sacred precincts so boldly, though he is said to have set guards around Westminster and along the banks of the Thames to prevent his political enemies taking sanctuary in the abbey.[19]

Richard's successor, Henry VII., though often provoked to do so by various pretenders and rebels taking sanctuary, seldom ventured to commit open violation or sacrilege.[20] But, as we have seen, by procuring a papal bull, whereby sanctuary was limited and important culprits could be "looked to" by keepers appointed by the king, he was able to get his victims out of sanctuary and into his hands. Nevertheless, Perkin Warbeck twice escaped death by means of sanctuary, and fugitives could still rely on the Church being on their side.[21] In fact it can be said, in general, that although there are a number of important cases of sanctuary violation to be met with in the annals of English history, yet the rights of the church in regard to the protection of those seeking a refuge from their foes, or from the law, were usually re-

[18] Mazzinghi, *Sanctuaries*, pp. 82-83.

[19] Mazzinghi, *Sanctuaries*, pp. 57-58, 83, on the authority of Sir Thomas More's *Life and Reign of Edward V.*, which he quotes.

[20] Sir Humphrey Stafford was, however, in the early years of Henry VII.'s reign, taken from a church at Colnham, near Abingdon, and executed at Tyburn by order of the king. For this act, amongst other things, Henry was denounced by Perkin Warbeck in the famous proclamation of 1495. Mazzinghi, *Sanctuaries*, pp. 66, 67.

[21] Perkin Warbeck was twice protected by the church. In 1497, on the approach of the royal forces, "this impostor took refuge in Bewley (Beaulieu), in the New Forest where he and divers companions registered themselves as sanctuary men." Bacon, *History of Henry VII.* Later, escaping from imprisonment, he took refuge in the Priory of Shene and owed his life to the intervention of the prior. Mazzinghi, *Sanctuaries*, 67-68.

spected. Further, also, it can be said, that all violations of sanctuary were protested against by the clergy, even down to Reformation times, and very frequently the perpetrators were severely punished by fine and excommunication. It was only by strenuously upholding its privileges that the Church could hope to retain them, and though it was a vain fight which they waged in behalf of the right of sanctuary, yet it was a long and a valiant one.

## CHAPTER VI

### SPECIAL AND PECULIAR FORMS OF SANCTUARY

The rules governing sanctuary and abjuration were, as we have seen, by no means uniform throughout England. But besides the class of general sanctuaries, consisting of all churches and sacred edifices, and the chartered sanctuaries, which while coming under the first head possessed special privileges and immunities in addition, there were a number of other places in which peculiar forms of sanctuary privilege obtained. In connection with some of the great English immunities and liberties, in particular, do we find extraordinary examples of sanctuary and asylum. The two great palatine earldoms, Durham and Chester, were noted places of resort for those criminals who were under the ban of English law. In Durham, as we have seen, the shrine of St. Cuthbert formed a safe refuge, but in Chester the protection extended was secular rather than religious. The right of affording sanctuary within the earldom was claimed and exercised by the Earls of Chester from an early period and it proved a valuable source of revenue as fines were exacted from all sanctuary-seekers in the county; if they should die a heriot had to be rendered; and should there be no heirs of his body, the sanctuary man's goods and chattels were forfeited. Certain places in the county, such as Hoole Heath, Overmarsh, and Rudhealth, became noted centers for fugitives seeking protection, though the privilege was not confined to such wastes but extended throughout the county. In one instance at least, the Earl of Chester farmed out the profits from sanctuary, but ordinarily, while he allowed fugitives and strangers to

settle as retainers on the lands of his barons, he reserved to himself all fines payable by criminals who resorted thither for protection. Another peculiarity, and one which must have attracted criminals, was that there was no limitation as to the time of protection, no forty days of grace and then abjuration. As long as the fugitive behaved himself and lived peaceably he could live where he wished in the county of Chester nor need fear any molestation, but might end his days there. And this protection extended to the worst of criminals equally with the least, to felons, Jews, traitors, and others, as well as to debtors and thieves. The natural consequence of such unlimited protection was that the Palatinate of Chester became the most notorious nest of criminals in England. There could be found the offscourings of the realm, men whom no other sanctuary would receive. Such a state of things told severely on the morals and conduct of the inhabitants of the district and caused great complaint and demanded speedy reform. Accordingly, an act was passed by Henry IV., by which most of the criminals resident in the earldom of Chester were deprived of this immunity and made liable to abjuration or outlawry and forfeiture of their goods. This lessened the evil greatly, though on account of extensive immunities still allowed to debtors, the county continued to be a favorite place of criminal resort.[1]

Some writers on the history of continental institutions and origins have put forward the hypothesis that the right of asylum and protection was connected with the idea of municipal freedom, more or less closely.[2] The only examples of any such connection in English municipal history are perhaps to be found in the cases of fugitive villains received

[1] Lysons (Daniel and Samuel), *Magna Brittania*, vol. III, *County Palatine of Chester*, p. 299; Mazzinghi, *Sanctuaries*, pp. 16-18.

[2] Flach, *Origines de l'ancienne France*, ch. ix.

and protected in the English boroughs.[3] There is, however, a case somewhat analogous, bearing on sanctuary protection, in connection with the rising of the townsmen of Bury St. Edmunds against the abbot and convent who controlled the borough. This rising took place in 1327 and was one of the most serious of the municipal revolts, a number of which took place in the same year. The townsmen of Bury, after many threats and some violence, managed, finally, to extort the abbot's assent to a charter of liberties which they had drawn up. In the main this charter sets forth the usual municipal privileges of the day, but the twenty-eighth clause reads as follows:

> "At the same time we will and grant that if any man in the town commit a felony and can not get to the entrance into the monastery he may go to the standard, which is appointed for the purpose, and can clasp the said standard, that then he be so completely safe, as if he had been admitted into the church, until he can gain admission to the church."[4]

This is an exceedingly unique and interesting example of sanctuary privilege forming a part of a municipal charter. It shows that in one English town at least, the right of sanctuary was much prized by the burgesses as being a right and privilege belonging to the people and not merely to the Church and under ecclesiastical control. Although this is the only case of the kind that has been met with, yet a similar privilege may possibly have existed in some of the other English towns.

When Henry VIII., in 1540, reformed the existing state of affairs in regard to sanctuary by limiting it to churches, hospitals, and churchyards, he raised up, at the same time,

[3] Gross, *Gild Merchant*, I, 30, 70, 74.

[4] *Memorials of St. Edmund's Abbey*, R. S., vol. III, p, 315, sect. 38.

seven cities or towns as peculiar sanctuaries. These places were made cities of refuge or asylum to which persons guilty of minor offenses might flee and there abide the rest of their lives. The towns of Wells, Westminster, Northampton, Manchester, York, Derby, and Lanceston were the ones allowed to afford sanctuary privilege. Commissioners were appointed under the great seal of the realm to set forth the limits of these and other sanctuaries.[5] Thus a class of secular sanctuary places was raised up which, in one case at least, soon roused complaint and opposition. The townsmen of Manchester, in 1542, sent up a petition against having sanctuary men resident in their midst. They complained that the cloth and cotton trade of the town had been much depressed and injured owing to the many depredations that had taken place since the resort thither of dissolute persons under sanction of the late act. Further, they said that they had no mayor, sheriff, nor bailiff in their town, that it was not walled, that it had no gaol or prison for the confinement of offenders and they therefore earnestly petitioned Parliament that they should be granted relief from the presence of sanctuary-seekers and that the sanctuary might be removed to some other town.[6] This strong petition was acceded to by the Parliament in the same year, and an act was passed removing the sanctuary to Chester, which it was said had no trade such as that at Manchester, but possessed a good gaol and a mayor, bailiffs, and corporation.[7] But Chester was no more content to be a sanctuary town than Manchester, and as the act had reserved to the king the power to change the sanctuary by proclamation, he acceded to the petition

[5] Acts of 32 Henry VIII., c. 12; Mazzinghi, pp. 83-84.

[6] Mazzinghi, *Sanctuaries*, p. 19, 84, where the reasons as stated are given.

[7] Acts of 33 Henry VIII., c. 15. Chester is here called Westchester, *Statutes of the Realm*, III; Mazzinghi, 19-20.

of the mayor and corporation of Chester, which set forth that Chester, being a port town on the borders of Wales, was not at all a meet place for malefactors to resort to, and that a sanctuary there would bring much discomfort and inconvenience to the merchants and inhabitants of the town, and by proclamation changed the sanctuary from Chester to Stafford.[8] The institution of these special places of perpetual sanctuary is a curious phase in the history of sanctuary in England. They did not, of course, last for any length of time, for, after considerable vacillation of legislation, their rights were taken away when sanctuary was completely abolished.

Reference has already been made to the presence of sanctuary crosses in certain parts of England, and in particular to the one at Armethwaite in Cumberland. Another such cross is to be found close to Land's End in Cornwall, about a mile from the ancient church of the town, at the corner of a road which leads down to certain ruins, known locally as "the sanctuary." This interesting cross, though generally regarded as Roman, is probably of Saxon or early Norman origin. It is of stone, each arm being two feet across, and the base three feet square and over a foot in height. Legends have gathered around this landmark, which bears on its face a human figure with arms extended in the shape of a cross, and the name of the Sanctuary Cross of St. Buryan has been given to it.[9] Though the fact that such a cross as this provided refuge and sanctuary may well be doubted by the critical investigator, yet in Scotland there still exist the remains of a true sanctuary cross. This is the cross known as MacDuff's Cross. The story, perhaps legend, concerning it is an interesting one and has frequently attracted the notice of the his-

[8] Mazzinghi, *Sanctuaries*, pp. 20, 42-43. Even at Stafford there were objections to the presence of the sanctuary.

[9] Mazzinghi, *Sanctuaries*, p. 25.

torian and antiquarian.[10] It is said that after the overthrow of the usurper, Macbeth, in the year 1057, and the coming of Malcolm Canmore, or Malcolm III., to the Scotch throne, MacDuff, the thane of Fife, who had been largely instrumental in overthrowing the usurper, asked that certain sanctuary privileges might be granted to his family. The king acceded to the request and by a royal grant it was declared that if any person related within nine degrees to the chief of the MacDuffs, killed a man without premeditation he should, on flying for protection to MacDuff's Cross, have his punishment remitted on payment of a fine. This famous cross stood near Lindores, in Fifeshire, and the pedestal still remains: the cross itself was destroyed by the Scotch Reformers in 1559. It seems probable that the privilege attaching to the cross has been exaggerated and that offenders of the MacDuff clan who fled thither were in reality only exempted from outside jurisdiction, but were responsible to the Court of the Earl of Fife. Thus the privilege would take on the nature of a grant of jurisdictional immunity to the earl. This view is borne out by a document, the original of which, bearing the date of 1291, is still in existence which certifies that a certain Alexander de Moravia claims the privilege as aforesaid. On the cross itself was a strange metrical inscription in Latin doggerel, the meaning of which, however, is very obscure and is much disputed.[11]

Amongst the peculiar survivals of sanctuary in England and Scotland was the protection afforded by the precincts of former religious buildings. Perhaps the best known English

[10] See in particular Cunninghame, *Essay upon MacDuff's Cross.*

[11] See Cunninghame, *Essay upon MacDuff's Cross*, and Sir Walter Scott, *Minstrelsy of Scotch Border*, note on MacDuff's Cross, and *MacDuff's Cross*, a dramatic sketch, with introduction, for a fuller description of this curious relic, and the legend connected with it. Scott refers to Lord Soule's "Law of Clan MacDuff," App., vol. IV, p. 206.

example is furnished by the district in London between Fleet street and the Thames near the Temple, known as Whitefriars or Alsatia. A convent of Carmelites, or White Friars, had been founded there in 1241 and had possessed certain privileges of sanctuary. Though after the Reformation the convent ceased to exist, and in 1580 the building was given over for the Whitefriars theater, yet privilege of sanctuary continued to be associated with the district. After 1616 the theater ceased to be used on account of the disreputable character of the neighborhood, and even after the Act of 1626, abolishing sanctuary privilege in England, the district continued to extend protection to criminals and to claim immunity from civil process. The pen of a great historical novelist has given us a graphic picture of the customs and life of Alsatia,[12] as it came to be called, being like the province of Alsace, or Alsatia, between France and Germany, a debatable ground. The libertines, the rogues, and the rascals, who frequented its purlieus and committed abuses and outrages on peaceable citizens, made it a notorious place of criminal resort.[13] Bailiffs and officers of the law were afraid to enter its precincts to serve warrants or make executions. A serious riot originated there in the reign of Charles II., and so flagrant did the abuse become that, finally, in 1697, an act was passed which put an end to any immunity existing there, the Alsatians were dispersed and the district partially purified. At the same time the protection afforded by the Savoy, the Mint, and other places was likewise abolished.[14] Thirty years later, by one last act, all

[12] Sir Walter Scott in the *Fortunes of Nigel*, and *Peveril of the Peak*. The name Alsatia first occurs in Shadwell's plays in Charles II.'s time, *The Woman Captain* (1680), and *The Squire of Alastia* (1688).

[13] Mazzinghi *Sanctuaries*, p. 16, 21, 22.

[14] Act of 8 and 9 Wm. III., ch. 27. An act "for preventing for the future, the many notorious and scandalous practices used in many pretended privileged places in and about the cities of London and Westminster,

vestiges of such sanctuary protection were done away with completely and the law could at last take its course freely within the city.[15]

In Scotland all sanctuaries were abolished at the time of the Reformation, but the privileges attaching to the ancient Abbey of Holyrood, in Edinburgh, continued after that date, and the precincts of Holyrood palace were recognized as affording sanctuary for debt. No criminals could, however, find refuge there, nor were crown debtors or fraudulent bankrupts allowed protection, and a warrant charging *meditato fugae*, or premeditated flight, could be executed within the sanctuary. Nevertheless, the resort of unfortunate debtors to Holyrood was very frequent. The boundaries or limits of the sanctuary embraced the whole of King's Park, surrounding the Palace, and the debtors found lodgings in part of a small street within the privileged limits. After being in sanctuary for twenty-four hours the fugitive debtor had to enter his name in the record of the Abbey Court in a register kept for the purpose. Unless he was so registered he was not entitled to more than one day's protection, but after registering he was safe from prosecution. By an Act passed in 1696 any insolvent who fled to sanctuary thereby constituted himself a *notour*, or legal bankrupt.[16] This curious privilege, a relic of sanctuary times, which was extended to debtors, was the last of such a nature in existence

and the borough of Southwark, county of Surrey, by obstructing the execution of legal process therein, and thereby defrauding and cheating great numbers of people of their honest and just debts." By this it was enacted that any creditor might issue legal process against any debtor although resident within the Minories, Salisbury Court, Whitefriars, Fulwood's Rents, Mitre Court, Baldwin's Gardens, The Savoy, Clink, Deadman's Place, Montague Close, or the Mint. See Mazzinghi, p. 16.

[15] Stephen, *History of the Criminal Law in England*, ch. xiii, summarizes the abuses put an end to.

[16] Bell, *Commentaries on Scottish Law*, vol. II, pp. 461 ff.

in the British Isles. It continued to exist far into the nineteenth century being only abolished in 1880, when imprisonment for debt was done away with, and such protection to the person of the debtor rendered unnecessary. Thus it is only within the last twenty-five years that sanctuary-seekers have ceased to exist in the United Kingdom.

## CHAPTER VII

### SUMMARY AND CONCLUSION

The history and progress of the right of sanctuary as it existed in England have now been treated as fully as the scope and purpose of this essay allow. We have seen the right of asylum in its origin amongst the Hebrews and the nations of the ancient world, a right grounded in their worship and religion. We have seen it later taken up by the Christian Church and Christian nations of Europe. Then its rise and development in England have been traced until it became the right or privilege of sanctuary with which abjuration of the realm was connected. The customs, the usages, the abuses, and the evils appertaining to sanctuary have been fully dealt with, and it only remains to say a few words in general in regard to sanctuary protection.

The whole basis of sanctuary privilege and protection in England was the power of the Church to assert its inviolability of privilege and the willingness of the State to recognize this claim and to respect ecclesiastical immunities. Without such assertion of their right or without such recognition by the State, there could not have been any secure sanctuary afforded to fugitives, no refuge for those seeking protection from powerful adversaries. It must never be forgotten that in the Middle Ages the Church was the great factor in civilization, the great protectress of the injured, oppressed, and unfortunate. It was the ecclesiastical influence that in the Dark Ages raised up such institutions of Christianity and light as the Truce of God and the Peace of God—the *Treuga Dei* and the *Pax Dei.* Another such institution,

at its best, was the right of sanctuary. The Church in those days had such a hold on men's minds, and the age was one of such superstition and fear of Divine vengeance, that the curse of a priest was more dreadful than a foeman's steel, the possible vengeance of an angry God more terrible than the wrath of man. Thus when the Church said that those who sought her protection must be treated with leniency and mercy, and their lives and persons spared, no State nor individual was strong enough or bold enough to refuse to comply. The right of sanctuary, therefore, in its developed form, was a typically mediaeval institution designed to meet the needs of the time and fit in with the existing laws and customs of the day.

That the privilege possessed by Christian churches was at one time beneficial and useful, no one can deny. When the law in the land was weak, when unlimited, barbarous, and merciless vengeance might be taken for small offenses, the shelter of a church often proved the salvation of unfortunate wrongdoers. No one should ever speak with contempt of the ecclesiastical institutions of the Middle Ages for most of these institutions were blessings in their time and age and suited to the needs of a less civilized community than ours. When bands of robbers, lawless marauders, and lordless men overran the land, when rough and ready revenge (we can hardly call it justice) was the rule not the exception, was it not well, indeed, that helpless peasants, unfortunate homicides, or defenseless women, not to speak of travelers, vanquished foes, and others in need of protection, could take refuge at some holy shrine or altar and be safe from molestation. Was it not also a blessing that uncivilized and inhuman as men's minds were in those days, they should yet be filled with what may, perhaps, be now considered as an irrational awe of the religious and supernatural? an awe, however, which prevented the invasion of sacred places and checked cruelty and

licentiousness. There is little doubt but that the influence and example of the Church greatly helped to inculcate more merciful and humane ideas in men's minds. Thus, in the Middle Ages, the right of sanctuary had in it much of good, much to commend it to the student of civilization. Especially was the privilege of sanctuary commendable in cases where the guilt of the sanctuary-seeker was doubtful. Many innocent persons were thus saved from unjust punishment, even from death. In other cases, when the guilt of the fugitive was beyond doubt, the sanctuary accorded him, if wrong, yet erred on the side of mercy, and the protection ameliorated the severity of the law.

But though in ages of defective legislation and low civilization sanctuaries were a blessing to the community, such was not the case when their priviliges began to be abused and taken advantage of by unworthy seekers after shelter and protection. Even though in such cases the sanctuary might err on the side of mercy, yet such error was costly to the civilized community, in that wrongdoing was protected and the proper maintenance of peace, order, and justice interfered with. The need or place for such an institution as that of sanctuary passed away as soon as the class of unfortunate or oppressed, for whom it had at first been designed, were assured by the law of a fair and equal trial or proper protection and safety.

The abolition of sanctuary privileges in England, moreover, did not, as some persons seem to imagine it did, make criminals liable to punishment that before had been avoided altogether. The oath of abjuration was in itself a punishment and disgrace, as it entailed outlawry and banishment as well as forfeiture and escheat of goods and lands. If criminals did not abjure after forty days of grace, they were forced to stand trial as ordinary offenders. It was only in a few specially privileged places that criminals could abide for any

length of time, and dwelling in sanctuary was the same in many ways as confinement in a gaol. Thus the doing away of sanctuary and abjuration, while ending an effete and abused mediaeval institution, did not really subject those who had been used to claim its privileges to any unjust or excessive penalties. The law dealt justly with the unfortunate in most cases, and in the case of the fraudulent and the habitually criminal sanctuary-seekers it was a blessing that they were at last brought under the strong and direct arm of the law.

In Europe, generally, the right of asylum existed under restrictions down to the end of the eighteenth century. In Germany, the perpetrators of certain of the more serious crimes were always excepted. Highwaymen, robbers, state conspirators, and habitual criminals could not receive church protection, and the institution was modified further by a bull of Martin V., in 1418, and by another in 1504 issued by Julius II. In a somewhat restricted form the German *Asylrecht* lingered on into modern times and was not finally abolished until the last quarter of the eighteenth century. In France the *droit d'asile* existed throughout the Middle Ages, but in 1539 was greatly limited and modified by an edict of Francis I.: the *Ordonnance sur le faut de la justice.*[1] During the constitutional and institutional changes of the period of the French Revolution, the right of asylum was totally abolished and done away with.

The broader side of the right of asylum, as regards fugitives who sought, and frequently still seek, a refuge and sanctuary in foreign countries or in inaccessible regions, has not been touched on by the writer of the present essay. The relation between the right of asylum in churches and sacred

[1] The history of the right of asylum in Europe is treated in two scholarly works, one by Bulmerincq, *Das Asylrecht*, Dorpat, 1853, and the other by Wallon, *Droit d'asile*, Paris, 1837.

edifices to the practice of criminals, defaulters, political refugees, and others taking sanctuary in foreign states has been dealt with by other writers, in one instance in connection with extradition of fugitives, in another in regard to the duty of a country's protecting those relying on her aid.[2] The object of the present writer has rather been to give a concise and logical account of the English form of church asylum known as right of sanctuary, with its attendant forms, usages, and customs, and the place it held in the national life of the country during the centuries in which the institution existed. Enough has been said to show the prevalence of sanctuary-seeking, the essentially English character of the procedure in connection with sanctuary and abjuration, and the causes of the decline and abolition of the institution.

In England the institution of sanctuary had three distinct stages, first of growth, then of development, and lastly of decay. The Anglo-Saxon period was the one which saw its definite origin in England and its growth into a national institution; the centuries succeeding the Norman conquest saw its development throughout the length and breadth of the land and its greatest prosperity; but with prosperity came abuse, familiarity bred contempt, and the Tudor and Stuart periods witnessed, first, an attempt at reform and limitation, when many of the existing sanctuaries were done away with, then, when the Reformation had done its work, the almost total abolition of sanctuary, abjuration, and all their attendant evils and abuses. The one great conclusion we must reach is that in England the right of sanctuary ran its full course and from being a necessity, and perhaps a blessing, became a burden and an abuse, even a curse to the State, so that its final abolition was a measure calculated to advance the interests of justice and morality in the land.

[2] Bulmerincq, *Das Asylrecht*, and Mazzinghi, *Sanctuaries*, are the writers referred to. See, also, however, Wallon, *Droit d'asile*.

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